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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRIDGET MARKS, individually and on behalf of her
infant children AMBER LYNN AYLSWORTH and
SCARLET LEE AYLSWORTH, and all those
similarly situated,

Plaintiffs,

- against -

JOHN AYLSWORTH, STATE OF NEW YORK,
ELLIOTT SPITZER as the Attorney General of the
State of New York, NEW YORK STATE UNIFIED
COURT SYSTEM, LAWYERS FOR CHILDREN, Inc.,
as the appointed Law Guardian for the infant children
named herein as Plaintiff-Petitioners, MOLLY
MURPHY, Esq. as the attorney appointed to act as
Law Guardian by Defendant-Respondent Lawyers for
Children, ARLENE D. GOLDBERG, as the presiding
Justice of the Family Court assigned to this proceeding,
DR. STEPHEN B. BILLICK, in his capacity as the
Court appointed forensic psychiatrist for the infant
children named herein as Plaintiff-Petitioners,
JOHN & JANE DOES 1 - 100 whose identities are
currently unknown but necessary parties to these
proceedings, ABC CORP.'S 1 - 100 those entities
whose identities are currently unknown but necessary
parties to these proceedings.

Docket:
Purchased: 6/1/04

**VERIFIED
COMPLAINT**

JURY DEMANDED

Defendant,
-----X

Plaintiffs named in the above captioned matter, by and through their attorneys,

Shanahan & Associates, P.C., do hereby complain of the collective defendants as follows:

PARTIES

1. Plaintiff Bridget Marks (“Marks”) is a natural person with her principle place of residence in New York County.

2. Marks brings this action on her behalf and on behalf of her infant children Amber Lynn Aylsworth (“Amber”) and Scarlet Lee Aylsworth (“Scarlet”)(Collectively known as “the “children”) and all similarly situated.

3. Defendant John Aylsworth (“Aylsworth”) is a natural person and the biological father of the children named as Plaintiffs herein with a principle place of residence in California.

4. Defendant State of New York (“State”) is the governmental entity which created and operated the Unified Court system of which the Family Court is a subdivision. Defendant Elliott Spitzer (“Spitzer”) is the New York State Attorney General and is sued in that capacity. Spitzer maintains an office in New York County at 120 Broadway, New York, New York 10271.

5. Defendant Unified Court System (“UCS”) is an entity created under the laws of the State of New York which operates the Family Court.

6. Defendant Lawyers for Children, Inc. (“LFC”) is a not-for-profit corporation created to advocate on behalf of infants in proceedings commenced in the Family Court. LFC is a state actor for purposes of 42 U.S.C. §1983.

7. Defendant Molly Murphy, Esq. (“Murphy”) is a natural person and attorney who was, upon information and belief appointed by LFC and the Family Court to act as

Law Guardian in proceedings giving rise to this Verified Complaint. Murphy maintains a principle place of business in New York County, State of New York, 110 Lafayette Street, New York, New York 10013. Murphy is a state actor for purposes of 42 U.S.C. §1983.

8. Defendant Arlene D. Goldberg (“Judge Goldberg”) is an honorable Justice of the Family Court and the presiding Judge in the proceeding giving rise to this Verified Complaint. She is sued in her official capacity as agent of defendants State and UCS. Judge Goldberg is a state actor for purposes of 42 U.S.C. §1983.

9. Defendant Dr. Stephen B. Billick (“Dr. Billick”) is the court appointed forensic psychiatrist appointed in the underlying Family Court proceeding. Dr. Billick maintains a place of business in New York County. Dr. Billick is a state actor for purposes of 42 U.S.C. §1983.

10. Defendants John and Jane Doe 1 - 100 and A.B.C. Corp.’s 1 - 100 are individuals and entities whose identities are currently unknown to Plaintiffs and to be determined in discovery who are necessary and indispensable parties to this action.

VENUE

10a. Venue is appropriate as the cause of action accrued in New York County which is located within the Southern District of New York.

JURISDICTION

11. Jurisdiction of this Court is appropriate as Federal Constitutional questions and statutes are at issue. More specifically, jurisdiction is conferred upon this Court by 28 U.S.C. §1343, which provides for original jurisdiction over all actions brought

pursuant to 42 U.S.C §1983, and by 28 U.S.C. §13 which provides jurisdiction over all cases brought pursuant to the Constitution of the United States. This Court has pendent jurisdiction over plaintiffs' state law claims.

FACTS COMMON TO ALL CAUSES OF ACTION

Facts Giving Rise to Family Court Proceedings

12. Marks and Aylsworth engaged in an extramarital affair which included sexual intimacy. At all times relevant, Marks was single and Aylsworth married to a non-party to this action.

13. On or about late 1998 or early 1999, Marks discovered she was pregnant. Aylsworth was the biological father of the unborn children.

14. On or about early 1999, Marks informed Aylsworth that she was pregnant and that he was the father of the unborn children.

15. Upon information and belief, Aylsworth had engaged in numerous affairs during his thirty-four marriage and said conduct was known and accepted by his long-time wife who is not named as a party herein.

16. Beginning in early 1999, Aylsworth and his wife repeatedly encouraged Marks to have an abortion and not carry the children to term.

17. Marks refused to abort the pregnancy.

18. Marks gave birth to Amber and Scarlet on September 8, 1999.

19. At no point before or since the birth have Marks and Aylsworth resided together.

20. After the birth, Aylsworth refused to acknowledge paternity of Amber and

Scarlet.

21. After the birth, no custodial order was entered and the children resided at all times relevant with Marks.

22. Aylsworth continued to reside in California and visit with the children on a sporadic basis.

Statutes and Rules Governing Appointment of Fiduciaries in Custody Proceedings

23. Chief Judge Jonathan Lippman in his report to Chief Judge Kaye entitled "Development Of A New Fiduciary Appointment System", February 9, 2004, annexed to papers in support of the Order to Show Cause as Exhibit L, see also Exhibit K and M, acknowledged the substantial flaws in the current State law governing appointments in fiduciary appointments and stated in pertinent part:

“As this Report makes abundantly clear, the fiduciary appointment process in New York is in need of reform. We have documented a wide range of problems that regularly arise in these cases in courts throughout the State. In doing so, we have confirmed the validity of many of the public criticisms concerning the fiduciary process.

Although our findings are troubling, for the following reasons we are confident that the system is now undergoing significant improvement. First, the Commission on Fiduciary Appointments, which at Chief Judge Kaye's request has been examining the appointment process, has completed its own review and is about to release its report and recommendations. The recommendations will include, among other things, proposals to strengthen eligibility and qualifications for fiduciary appointment, tighten restrictions on the number of appointments that individual fiduciaries may receive and upgrade oversight of the appointment process. If implemented, these recommendations will lead to significant improvements in the existing system.

Second, court administration already has taken major steps to correct the flaws we found in the fiduciary filing process. Last Spring, a new oversight system was implemented, in which special fiduciary clerks have been appointed in every Judicial District. Reporting directly to the District Administrative Judges,

the fiduciary clerks serve as the clearinghouse for all forms appointees and judges are required to file with OCA, and they will be monitoring the OCA fiduciary database to verify that information concerning who is receiving appointments and how much they are paid is entered accurately. The goal is to ensure that all forms are properly filed in every single case in which a fiduciary is appointed and that no fiduciary appointee is paid unless he or she has filed the necessary forms.

Third, in cases in which we have uncovered clear violations of the fiduciary rules or ethical standards, Chief Administrative Judge Lippman has referred individuals to appropriate disciplinary authorities. We have every expectation that these referrals, and any future referrals that may be made, will send an unmistakable message to the bar and bench that violations of the fiduciary rules will not be tolerated.

Finally, our work does not end with this report. In establishing the Office of the Inspector General for Fiduciary Appointments, Chief Judge Kaye made clear that the office will be a permanent entity within the court system. Together with OCA's Internal Audit Unit, our examination of fiduciary appointment practices throughout the State is ongoing. We will continue to identify problems in this process and recommend that individuals be referred to relevant disciplinary authorities, as appropriate. Moreover, in the coming months, we will help to ensure compliance with the rules, monitor the effectiveness of the reforms, and assist the bench and bar in meeting their responsibilities in regard to fiduciary appointments". See Exhibit L annexed to Order to Show Cause, Pages 36-37.

24. The Family Court Act, §241, et seq. provides the following guidelines for the appointment of Law Guardians in Family Court proceedings. The relevant statutes follow:

§ 241. Findings and Purpose

This act declares that minors who are the subject of family court proceedings should be represented by counsel of their own choosing or by law guardians. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition. This part established a system of law guardians for minor who often require the assistance of counsel to help protect their interests and to help them express their wishes to the court. Nothing in this act is intended to preclude any other interested person from appearing by counsel".

§ 242. Law guardian

As used in this act, "law guardian" refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred and forty-nine of this act.

§ 243. Designation

(a) The office of court administration may enter into an agreement with a legal aid society for the society to provide law guardians for the family court or appeals in proceedings originating in the family court in a county having a legal aid society.

(b) The appellate division of the supreme court for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate law guardian services, enter into an agreement, subject to regulations as may be promulgated by the administrative board of the courts, with any qualified attorney or attorneys to serve as law guardian or as law guardians for the family court or appeals in proceedings originating in the family court in that county.

(c) The appellate division of the supreme court for the judicial department in which a county is located may designate a panel of law guardians for the family court and appeals in proceedings originating in the family court in that county, subject to the approval of the administrative board of the courts. For this purpose, it may invite a bar association to recommend qualified persons for consideration by the said appellate division in making its designation, subject to standards as may be promulgated by such administrative board.

§ 244. Duration of designation

(a) An agreement pursuant to subdivision (a) of section two hundred forty-three of this chapter may be terminated by the office of court administration by serving notice on the society sixty days prior to the effective date of the termination.

(b) No designations pursuant to subdivision (c) of such section two hundred forty-three may be for a term of more than one year, but successive designations may be made. The appellate division proceeding pursuant to such subdivision (c) may at any time increase or decrease the number of law guardians designated in any county and may rescind any designation at any time, subject to the approval of the office of court administration.

§ 245. Compensation

(a) If the office of court administration proceeds pursuant to subdivision (a) of section two hundred forty-three of this chapter, the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of law guardians by the respective legal aid society, approved by the said administrative board, and the office of court administration may require such reports as it deems necessary from the society.

(b) If an appellate division proceeds pursuant to subdivision (b) of such section two hundred forty-three, the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of law guardians by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys.

(c) If an appellate division proceeds pursuant to subdivision (c) of such section two hundred forty-three, law guardians shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of section thirty-five of the judiciary law.

25. Professor Besharov notes in his practice commentaries to F.C.A. §241:

“The convoluted wording of this section reflects: (1) the underlying ambivalence of its drafters about the role of the Law Guardians and (2) the problems inherent in establishing guidelines for the representation of young people of varying degrees of maturity”. See F.C.A. §241, Practice Commentary, Douglas J. Besharov, Esq.

26. The Chief Judge has also promulgated rules governing fiduciaries. These rules are found in Rule 36 of Chief Judge. That Rule states in pertinent part:

“PART 36. APPOINTMENT OF GUARDIANS, GUARDIANS AD LITEM, COURT EVALUATORS, ATTORNEYS FOR INCAPACITATED PERSONS, RECEIVERS, PERSONS DESIGNATED TO PERFORM SERVICES FOR A RECEIVER, AND REFEREES

' 36.1 Appointments

(a) All appointments of guardians, guardians ad litem, court evaluators, attorneys

for alleged incapacitated persons (under Article 81 of the Mental Hygiene Law), receivers, persons designated to perform services for a receiver and referees shall be made by the judge authorized by law to make the appointment upon evaluation by that judge of the qualifications of candidates for appointment. The appointing judge may select the appointee from the list of applicants established by the Chief Administrator of the Courts pursuant to section 36.2(a) of this Part. Except for the appointment of court evaluators, should the appointing judge decide that a person or institution not included on the list of applicants is better qualified for appointment in a particular matter, either because of prior experience with the ward or estate, or because of particular expertise necessary to the case, the judge may appoint that person or institution, and in such instance shall place the reasons for such appointment and the qualifications of such appointee on the record. The appointing judge shall be solely responsible for determining the qualifications of any appointee.

(b)(1) No person shall be appointed who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System of the State of New York, within the sixth degree of relationship. This provision shall apply only to known relatives of judges and not to the professional associates of those relatives.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System.

(c) No person or institution shall be eligible to receive more than one appointment within a 12-month period, calculated from the date of appointment, for which the compensation anticipated to be awarded to the appointee exceeds the sum of \$5,000, except that where the appointing judge determines that unusual circumstances of continuity of representation or familiarity with a case require an appointment for which compensation would exceed that permitted by this subdivision, the judge may make such appointment and must set forth in writing the reason for the exception.

(d) A prospective appointee whose appointment is subject to these rules shall certify in writing to the appointing judge, prior to the acceptance of the appointment, that the appointment will not be in violation of these rules. The certification shall include a statement that the appointment will be in compliance with subdivisions (b) and (c) of section 36.1 of this Part and shall include a list of all previous appointments received within the preceding 12 months. The

certification shall be placed in the case file.

(e) The provisions of this Part shall not apply to:

(1) appointments of law guardians pursuant to section 243 of the Family Court Act, guardians ad litem pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;

(2) an appointment without compensation; and

(3) the appointment of any of the following:

(i) a relative of, or person having legally recognized duty or interest with respect to the affairs of, the infant, ward, incapacitated person, decedent or beneficiary of an estate;

(ii) a guardian ad litem nominated by an infant of 14 years of age or over;

(iii) a nonprofit institution performing social services;

(iv) a bank or trust company as a depository for funds;

(v) a public administrator or a public official vested with the powers of an administrator;

(vi) a person or institution whose appointment is required by law;

(vii) a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required.

(f) The reporting and certification requirements set forth in sections 36.1(d), 36.3(a) and 36.4(c) of this Part shall not apply to the appointment of a referee whose compensation for such appointment is not anticipated to exceed \$550.

' 36.2 Lists of Available Applicants

(a) The Chief Administrator of the Courts shall provide for the application by persons and institutions seeking appointment as guardians, guardians ad litem, court evaluators, attorneys for alleged incapacitated person, receivers, persons designated to perform services for the receiver, and referees. The Chief Administrator shall assemble such applications and shall maintain and make available for use by the appointing judge lists of applicants for appointment.

(b) The lists maintained by the Chief Administrator shall contain such information as will enable the appointing judge to be apprised of the background of the applicants set forth therein. The lists may be maintained by court, county, judicial district, judicial department or combination thereof, and may be differentiated by type of appointment and area of special expertise.

' 36.3 Reporting of Appointments

(a) Every person and institution receiving an appointment pursuant to this Part shall file a notice of the appointment with the Chief Administrator of the Courts, in a manner to be prescribed by the Chief Administrator, within 10 days of receipt of notice of the appointment. Such notice shall be a public record. The appointee also shall certify in writing to the appointing judge that the notice of appointment has been filed. The Chief Administrator shall arrange for the periodic public publication of the names of all persons and institutions appointed by each appointing judge in appropriate law journals and periodicals.

(b) No later than March 31 of each year, the Chief Administrator shall report in writing to the Chief Judge of the operation of the procedures set forth in this Part, including recommendations for modification. A copy of each report shall be transmitted to the members of the Court of Appeals and the Administrative Board.

' 36.4 Compensation

(a) Fees to appointees pursuant to this rule shall not exceed the fair value of the services rendered.

(b) Each award of fees of \$2,500 or more to appointees pursuant to this section shall be accompanied by an explanation, in writing, of the reasons therefor by the judge making the award.

(c) No fees shall be awarded unless the appointee has filed the notice of appointment and certification of compliance required by section 36.3(a) of this Part.

' 36.5 Education and Training

The Chief Administrator or the appointing judge may require that applicants for appointment complete designated courses or training curricula prior to receiving an appointment". See Exhibit K, Pages 38-40.

27. Both the Family Court Act and Rule 36 are absolutely silent as to oversight

and supervision of the guardians purportedly appointed to represent the best interests of the minor child.

Procedural History of Family Court Proceedings

28. On or about October 2002, three years after the children were born, Aylsworth sought to have paternity established and sought court directed visitation with the children.

29. The presiding Judge Goldberg ordered supervised visitation and a forensic evaluation after the filing of the petition seeking visitation was filed by Aylsworth.

30. Upon return from two supervised visits, the children indicated to a friend of Marks that Aylsworth had engaged in inappropriate behavior with the children including telling their mother Marks that Aylsworth had touched the children's "pee pee's".

31. Marks' confronted Aylsworth with the childrens statements. Aylsworth vehemently denied inappropriate conduct.

32. In retaliation against Marks for confronting Aylsworth, in July 2003, Aylsworth filed an amended petition seeking custody of the children.

33. Marks at all times opposed custody by Aylsworth and opposed relocation of the children to California where Aylsworth continued to reside.

34. After proceedings before Judge Goldberg, on May 21, 2004 an order was issued awarding custody of the children to Aylsworth. See Exhibit A annexed to Order to Show Cause.

35. Judge Goldberg based her decision on the theory of parental alienation. However, Judge Goldberg did not explain in her decision her reasoning and indicated she

would do so at an future unspecified date.

36. Although Judge Goldberg did not explain her reasoning in the decision and order and reserved her specific reasoning for a future decision, she ordered Marks to turn over custody of the children on June 1, 2004 at noon.

37. On May 27, 2004, Marks sought to stay the decision and order in the Appellate Division, First Department. See Exhibit B annexed to Order to Show Cause.

38. The First Department denied without prejudice the request for a stay pending appeal based upon Judge Goldberg's failure to issue a full opinion. The First Department instructed Marks to return in July "at which time it is likely the full opinion of the Family Court Judge will have been issued".

39. As the children are scheduled to be turned over to Alysworth, and Marks has no right to any appellate review based upon the failure of Judge Goldberg to issue a final decision, Plaintiffs Constitutional and Civil Rights will be irreparably harmed with no access to the appellate levels of the New York State Court system.

Constitutional and Civil Rights Violations Inherent in Family Court Proceeding

Forensic Psychiatrist Stephen B. Billick

40. Judge Goldberg appointed Dr. Stephen B. Billick as the independent forensic psychiatrist in the Family Court proceeding. The conduct of Dr. Billick violated the New York State and United States Constitutions guarantee of procedural and substantive due process.

41. Dr. Billick was unqualified and ethically prohibited from performing as an independent forensic psychiatrist in the Family Court proceeding for the following

reasons:

- a. Dr. Billick failed to disclose an almost identical and extremely personal family court proceeding involving his brother. See Exhibit O annexed to Order to Show Cause.
- b. Upon information and belief and in numerous cases known to Marks, Dr. Billick has a established record of favoring male parents to female parents in custody proceedings.
- c. Dr. Billick expanded the scope of his forensic evaluation from visitation to custody without Court order or authorization.
- d. Dr. Billick initially indicated that the forensic report would cost \$6,000. That expense inexplicably increased to in excess of \$42,000.00. The Court ordered Marks to pay fifty-percent of this expense even though the income of Aylsworth far exceeds the income of Marks. Furthermore, the Court indicated that Marks would be held in contempt of court should she not pay fifty-percent of the fees purportedly owed to Dr. Billick.
- e. On July 2, 2003, Dr. Billick initiated contact with the wife of Aylsworth who is not a party hereto and requested that his wife correspond on her willingness to support custody for Aylsworth. This ex-parte communication was initiated by Dr. Billick prior to the amendment of his petition by Aylsworth seeking custody rather than visitation.
- f. Numerous additional ex-parte conversations took place between Dr. Billick and Aylsworth during course of proceedings.
- g. Dr. Billick's forensic report contained statements pertaining to purported interviews with witnesses including but not limited to Ellen Shields, therapist for Marks and the children; Detective Collins of the New York City Police Department which were proven unreliable and untrue at trial.
- h. Dr. Billick interviewed Aylsworth's family but not Mark's in the process of completing his forensic evaluation.
- i. Dr. Billick did not interview Aylsworth's therapist but did interview Marks' therapist in the process of completing his forensic evaluation.
- j. Dr. Billick did not interview and deemed as unimportant the opinions of teachers and nannies who knew the children best and participated in their day-to-day lives.

k. Dr. Billick offered testimony at trial based upon purported audio-tapes of phone conversations between Aylsworth and the children. Those audio-tapes were never turned over during discovery to Marks or her counsel and not produced at trial. Judge Goldberg allowed testimony by Dr. Billick at trial pertaining to the “lost” tapes which were never produced for authentication and cross-examination.

l. The purported taping of conversations between Aylsworth and the children encouraged by Dr. Billick without the knowledge and consent of Marks constitutes an illegal activity and therefore constitutes non-admissible evidence for purposes of trial.

Lawyers for Children’s, Inc. and Molloy Murphy

42. The conduct of LFC and Murphy violates the New York State and United States Constitutions and procedural and substantive due process.

43. LFC and Murphy in illegal and improper conduct including but not limited to:

a. By and through their instruction to Marks that the children are prohibited from psychological counseling during the pendency of the Family Court proceedings. See Affidavit of Blumenthal annexed to Order to Show Cause.

b. By and through their instruction to Marks that the children may not be interviewed by the Doctor recommended by the New York City Police Department pertaining to an investigation of the allegations of inappropriate sexually related conduct by Aylsworth.

Judge Arlene D. Goldberg

44. The conduct of Judge Goldberg combined with the foregoing conduct of Dr. Billick, LFC and Murphy violates the New York State and United States Constitutions and procedural and substantive due process.

45. Inappropriate, improper and prejudicial conduct of the trial Court includes but is not limited to:

- a. Expansion of the forensic evaluation from visitation to custody absent an order of the Court permitting same.
- b. Failure to adjust payment terms for costs associated for the forensic evaluation when the cost of same rose from \$6,000 to in excess of \$42,000 based upon the ability of the respective parties to pay (each party was required to share equally the costs of the evaluation).
- c. Threatening to hold Marks in contempt-of- court absent payment and instructing Marks to sell her engagement ring from her current fiancée to make payment to Dr. Billick.
- d. Permitting Dr. Billick, the LFC and Murphy to engage in repeated ex-parte communication outside the presence of Marks and/or her counsel.
- e. Permitting Dr. Billick to issue his forensic report on October 20, 2003, only fourteen days prior to trial and denying the application of Marks to adjourn the trial for purposes of review and the report.
- f. Denying the application of Marks to permit Marks' forensic psychiatrist access to the children for purposes of rebutting the report issued fourteen days before trial by Billick.
- g. Denying the application of Marks to depose the Court appointed supervisor after the issuance of her report.
- h. Permitting Aylsworth rebuttal at trial but denying same to Marks.
- I. Deeming inadmissible and irrelevant at trial evidence pertaining to current marital status even though the Court was considering awarding custody of the children to Aylsworth and the LFC recommended custody to Aylsworth based upon the purported "stability of his household".
- j. Denial of application of Marks to enter into evidence the divorce petition of the wife of Aylsworth filed in California which is pending in California. See Exhibit H annexed to Order to Show Cause.

46. After proceedings before Judge Goldberg, on May 21, 2004 an order was issued awarding custody of the children to Aylsworth and requiring Aylsworth to establish a residence in New York County. See Exhibit A annexed to Order to Show

Cause.

47. Judge Goldberg based her decision on the purported theory of “parental alienation”. However, Judge Goldberg did not explain or elaborate in her decision and order her reasoning and indicated she plans do so at an unspecified date in the future.

48. Although Judge Goldberg did not explain her reasoning in the decision and order and reserved that reasoning for a future decision, she ordered Marks to turn over custody of the children on June 1, 2004 at noon.

49. On May 27, 2004, Marks sought to stay the decision and order in the Appellate Division, First Department. See Exhibit B.

50. The First Department denied without prejudice the request for a stay pending appeal based upon Judge Goldberg’s failure to issue a full opinion. The First Department instructed Marks to return in July “at which time it is likely the full opinion of the Family Court Judge will have been issued”.

FIRST CAUSE OF ACTION

51. The allegations of paragraphs 1 - 50 are repeated and realleged fully herein by reference.

52. Defendant state actors acting under of color of state law and by and through the power vested in them, violated the Civil Rights of Plaintiffs by abusing the aforesated powers vested in them, resulting in a violation of the Constitutional and Civil Rights of Plaintiffs.

53. Defendants State, UCS, LFC and Judge Goldberg have violated the Civil Rights of Plaintiffs by and through the official policy of the State to appoint forensic

psychiatrists and Law Guardians in actions such as the Family Court proceeding at issue herein.

54. Defendants State, UCS, LFC and Judge Goldberg failed to adequately train and supervise forensic psychiatrists and Law Guardians after appointment in the Family Court proceeding at issue herein and in proceedings involving similarly situated Plaintiffs.

55. Defendants failure to train, monitor and adequately supervise forensic psychiatrists and Law Guardians amounts to deliberate indifference to the rights of the Plaintiffs in this action and all similarly situated.

56. Certification of forensic psychiatrists and Law Guardians in the State of New York requires only a one-day seminar prior to certification which amounts to deliberate indifference as a matter of law.

57. Upon information and belief, appointment of forensic psychiatrists and Law Guardians in the State of New York is based on personal friendships with the Judge, or political affiliation rather than merit and experience in handling the issues present in the litigation for which they are appointed. Said conduct results in deliberate indifference to the rights of Plaintiffs in this action and all similarly situated. See Exhibits K, L, M.

58. New York State has recognized systemic flaws and abuse of due process and Civil Rights of Plaintiffs herein and similarly situated plaintiffs and has appointed a Commission to investigate same chaired by Justice Sondra Miller. However, the recommendations of said Commission are not anticipated to be finalized or released for approximately one-year to the detriment of Plaintiffs herein. See Exhibits K, L, M.

59. New York State currently maintains no system for reporting abuses and violations of due process and Civil Rights by court appointed forensic psychiatrists and Law Guardians. Said conduct is in deliberate indifference to the rights of Plaintiffs in this action and all similarly situated plaintiffs. See Exhibits K, L, M.

60. As a result of the violation of 42 U.S.C. §1983, et seq., Plaintiffs have been and will be irreparably damaged absent an order of this Court.

SECOND CAUSE OF ACTION

61. The contents of paragraphs 1 - 60 are repeated and realleged herein as if restated in full.

62. The Fourteenth Amendment to the United States Constitution provides that citizens of the United States are entitled to substantive and procedural due process. The New York State Constitution also provides for both substantive and procedural due process.

63. By and through the actions of Defendants State, UCS, LFC and Judge Goldberg, Plaintiffs were denied due process.

64. The conduct of defendants has interfered with and deprived the Plaintiffs liberty interest in familial integrity and Marks' right to direct the upbringing of her children.

65. The Fourteenth Amendment prohibits the State's unwarranted usurpation, disregard or disrespect of the Plaintiffs liberty interest in familial integrity.

66. By and through the foregoing actions, Plaintiffs were denied due process and equal protection under the Constitution of the United States and will be damaged absent

an order of this Court.

THIRD CAUSE OF ACTION

67. The contents of paragraphs 1 - 66 are repeated and realleged herein as if restated in full.

68. The Fourteenth Amendment to the United States Constitution provides that citizens of the United States are entitled to equal protection under the law. The New York State Constitution also provides for equal protection under the law.

69. By and through the actions of Defendants State, UCS, LFC and Judge Goldberg, Plaintiffs were denied equal protection.

70. Upon information and belief, Dr. Billings, the court appointed forensic psychiatrist has a predisposition towards awarding custody and visitation to the male parent, rather than the female parent as confirmed by his recommendation in this proceeding and other similar proceedings.

71. The compensation of the forensic psychiatrist and Law Guardian in this proceeding and similar proceedings disproportionately burdens Marks, the female parent.

72. Upon information and belief, the current system utilized by the defendants of appointment and compensation of forensic psychiatrists disproportionately burdens the female mother Marks and all similarly situated mothers.

73. Sex and/or gender are protected categories under the law and for purposes of equal protection.

74. As the Plaintiffs and all others similarly situated have been disproportionately burdened by and subjected to disparate treatment by the actions and

procedures of the defendants herein based upon their sex and or gender, they have been denied equal protection under the law.

75. By and through the foregoing actions, Plaintiffs were denied due process and equal protection under the Constitution of the United States and will be damaged absent an order of this Court.

WHEREFORE, Plaintiffs pray for an order of this Court:

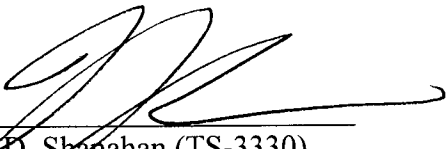
- a. Staying enforcement of the Order of Judge Arlene D. Goldberg dated May 21, 2004 pending entry of a final order explaining her rational for awarding custody to Aylsworth thereby permitting Plaintiff Marks to seek appellate review of the decision and a stay of its enforcement pending appeal.**
- b. Restraining and enjoining any actions consistent with the Order of Judge Arlene D. Goldberg dated May 21, 2004 pending entry of a final order explaining her rational for awarding custody to Aylsworth pending entry of a final order explaining her rational for awarding custody to Aylsworth thereby permitting Plaintiff Marks to seek appellate review of the decision and a stay of its enforcement pending appeal.**
- c. Declaring the acts, policies and procedures of the collective defendants in the appointment, supervision and compensation of forensic psychiatrists and Law Guardians in this matter and those of similarly situated Plaintiffs to violate 42 U.S.C. §1983, et seq. resulting in a deprivation of Civil Rights.**
- d. Declaring the acts, policies and procedures of the collective defendants in the appointment, supervision and compensation of forensic psychiatrists and Law Guardians in this matter and those of similarly situated Plaintiffs to violate the United States and New York State Constitution guarantee of both substantive and procedural due process.**
- e. Declaring the acts, policies and procedures of the collective defendants in the appointment, supervision and compensation of forensic psychiatrists and Law Guardians in this matter and those of similarly situated Plaintiffs to violate equal protection under the law based upon the sex and/or gender of Plaintiffs as they disproportionately disfavor female parents and favor male parents.**
- f. Appointing a special master to investigate and supervise the**

appointment of fiduciaries in New York State Family Court proceedings until such time as the Chief Judge institutes reform which comport with Constitutional and Civil Rights of litigants.

g. Appointing a special master to investigate the conduct of the collective defendants in the underlying Family Court proceeding captioned Aylsworth v. Marks to determine if the Civil and Constitutional Rights of the Plaintiffs were violated.

g. Awarding attorney fees and costs of this action to Plaintiffs pursuant to 42 U.S.C. §1985.

Dated: New York, New York
May 31, 2004



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