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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.

Defendant,

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Docket:
Purchased: 6/1/04

AFFIRMATION OF SHANAHAN INCORPORATING MEMO OF LAW

JURY DEMANDED

Thomas D. Shanahan, an attorney admitted to practice before this Court, does hereby affirm under penalty of sanction:

1. I am counsel for Plaintiff in this action and submit this affirmation in support of the provisional relief sought herein: a stay and temporary restraining order of the decision of the Honorable Judge Goldberg dated May 21, 2004. See Exhibit A.

2. The decision of Judge Arlene Goldberg dated May 21, 2004 is not appealable as she indicates in her decision that a final order explaining the basis of her decision will be entered at some point in the future. See Exhibit A,B.

STANDARD FOR PROVISIONAL RELIEF

3. The party seeking entry of provisional relief has the burden of demonstrating: irreparable harm; a clear and substantial likelihood of success on the merits; and that the balancing of the equities favors the moving party. See Wright v. Giuliani, 230 F.3d 543 (2nd Cir. 2000), Otokoyama Co. v. Wine Import of Japan, Inc., 175 F.3d 266 (2nd Cir. 1999). For the reasons that follow and based upon the pleadings and exhibits filed herein, we respectfully request that the provisional relief sought be granted.

IRREPARABLE HARM

4. We respectfully refer this Court to the Affidavit of Celia Blumenthal, the last child psychiatrist to treat the children at issue. See Affidavit of Blumenthal dated May 31, 2004.

5. The decision of Judge Arlene Goldberg is a non-final order as indicated by footnote one to the decision. See Exhibit A. That non-final, unappealable order contains the following decision and order as relevant herein:

"In sum, the court finds that it is in the best interests of the children that the Petitioner be awarded custody, as supported by the children's law guardian and the forensic evaluator. However, as the mother has had a strong presence in the children's lives and given their attachment to her, the Court finds that a permanent move to California at this time would prove to be detrimental as it would deny the mother meaningful and regular visitation with the children.

The Petitioner testified that he would be willing to move to New York to obtain custody. Therefore, the court finds that the father's custody should be conditioned, as advocated by the law guardian, to living within forty miles of the New York metropolitan area where the mother resides. The court further finds and ORDERS that the mother's visitation and telephone contact with the children be monitored and supervised pending any further order of the Court. The Court further finds and ORDERS that the mother is not to permit Pam Soliemon to have any contact with the children. It is further ORDERED that the physical exchange of the children shall not occur until June 1, 2004 at 12:00 p.m. so that the children may complete their school year".

6. Counsel for my client in the Family Court proceeding attempted to argue for the entry of a stay of the Order dated May 21, 2004 in the Appellate Division, First Department on May 27, 2004. See Exhibit B. The First Department stated in pertinent part:

"Interim stay denied without prejudice to renew on or after July 5 at which time it is likely the full opinion of the Family Court Judge (Goldberg, J.) will have been issued and the parties may then frame their arguments regarding a stay pending appeal."

7. The Appellate Division has refused to consider a stay pending entry of the final decision in the matter and set a control date for July 5, 2004 for the application. There is no guarantee that a decision will be rendered by that date or at any date certain in the future.

8. The annexed Affidavit of the last child psychologist who treated the children, Celia Blumenthal, M.D., confirms the irreparable harm that will occur should the infant

children be turned over on June 1, 2004. Plaintiff is entitled to a right to appeal and for good cause shown, a stay on implementation of the decision pending the appeal. Should the decision be reversed, the children will be shuffled back and forth between different parents, schools and residences pending resolution of the custody dispute. This would irreparably damage the children psychologically. See Affidavit of Blumenthal. This Court should keep in mind this is the only home they have ever known is the their mothers home.

9. The balancing of the equities also favors Plaintiff herein. The stay will preserve the status quo that the children have known since their birth: Residence with their mother in New York City.

10. Should the decision of Judge Goldberg be upheld after due process, i.e., an appeal, transfer of the children could take place. Judge Goldberg then ordered that all interaction between the mother and children be monitored and supervised. It is respectfully submitted that said portion of her order constitutes an unwarranted governmental intrusion into a fundamental liberty interest, i.e. the parent/child relationship.

11. As the children have a high I.Q. level and can verbalize as they are now four-and-a-half years old. We respectfully request that should any doubt exist in the mind of the Court as to irreparable harm, the Court conduct an in camera meeting with the children to determine their wishes. As my client confirms in her Affidavit, the Family Court Judge at no time met with the children to discuss their wishes even though they are at an age where they can verbalize. See Affidavit of Marks. Precedent exists for

Federal Courts to conduct an in camera interview with the children to determine what is in their best interests. Blandin v. Dubois, 238 F.3d 153 (2nd. Cir. 2001), Robinson v. Robinson, 983 F. Supp. 1339, 1344 (D. Colo. 1997), see e.g., R. Nanos, *The Views of A Child: Emerging Interpretation and Significance of the Child's Objection Defense Under the Hague Child Abduction Convention*, 22 Brook. J. Int'l L. 437, 448 (1996). Although these cases primarily deal with international custody disputes, they do stand for the proposition that the Court may undertake the in camera interview when in the best interests of the child such as in this case.

LIKELIHOOD OF SUCCESS ON THE MERITS

12. Plaintiff will succeed on the merits of the underlying action and the relief therefore should be granted. Even Patricia Grant, Esq., counsel for Mr. Aylsworth, the defendant named herein, publically stated that the system of appointment and monitoring of Law Guardians and other fiduciaries New York State is "a sham. It's wrong. It's really wrong". See Exhibit F, New York Daily News, Sunday, May 31, 2004.

13. Although Federal Courts are loath to intercede in an action of this nature, the doctrine of abstention should be waived in this matter based upon the serious constitutional defects which exist in the Family Courts in the State of New York. See In re Sharwline Nicholson, et al, 181 F. Supp. 2d 182, 2001 U.S. Dist. LEXIS 21619 (E.D.N.Y. 2001), upheld on appeal pending certification of questions to the New York State Court of Appeals, In re Nicholson, 344 F.3d 154, 2003 U.S. App. LEXIS 19076 (2nd Cir. 2003). In In re Nicholson, the District Court entered a preliminary injunction against the City New York, Administration for Child Services and State Defendants from

continuing their policy and practice of removal of "children of battered mothers who were victims of domestic violence reasoning that the mothers "engaged in" domestic violence "by being the victims of domestic violence". Id. 181 F. Supp.2d 185.

14. As ludicrous as that may appear, that was the policy and practice of the City and State of New York and the Family Court up and until the District Court enjoined their conduct. After extensive hearings and review of the defendants policies and practices, the District Court interceded and established a framework for dealing with children of families involved with domestic violence which did not offend constitutional concerns. Id., 181 F. Supp. 2d 181 - 192. Plaintiff Marks seeks that same protection for herself, her infant children and all similarly situated to this action.

15. The facts in this matter and New York State Law governing appointments of fiduciaries such as forensic psychiatrists and Law Guardians cries out for similar review. The law is unconstitutionally vague, ambiguous and does not supervise and monitor the conduct of the fiduciaries appointed by the Court. As such, this Court should disregard the Pullman doctrine and the doctrine of abstention, and review the merits of this proceeding for constitutional compliance. See Allstate Insurance Company v. Serio, 261 F.3d 143, 2001 U.S. App. LEXIS 16510 (2nd Cir. 2001), In re Nicholson, 344 F.3d 154, 2003 U.S. App. LEXIS 19076 (2nd Cir. 2003)(Certifying questions pertaining to State Law and child removal to the New York State Court of Appeals).

15. The United States Supreme Court has held that "parents have a well-recognized interest in the care, custody, and control of their children that is perhaps the oldest of fundamental liberty interests". Troxel v. Granville, 530 U.S. 57, 62, 147 L.Ed.

2d 49, 120 S.Ct. 2054 (2000). The Second Circuit has also held that "the interest of children in preserving family integrity is also constitutionally protected". Duchesne v. Sugarman, 566 F.2d 817, 825 (2nd Cir. 1977).

16. Most importantly, parents and their children have a constitutional right to due process of law before a government can step in to separate parent and child. Tenenbaum v. Williams, 193 F.3d 581, 596 (2nd Cir. 1999). Pursuant to Tenenbaum, a Court is authorized to intercede in an emergency capacity upon a showing that the welfare of the child at issue is at risk. Id. The order and decision at issue makes no finding of imminent harm to the children absent the transfer of custody on June 1, 2004. See Exhibit A.

17. Chief Judge Jonathan Lippman in his report to Chief Judge Kaye entitled "Development Of A New Fiduciary Appointment System", February 9, 2004, annexed hereto 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, Pages 36-37.

18. 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 indispensible 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.

19. Professor Bessharov 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.

20. 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 ___, Pages 38-40.

21. 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.

22. As demonstrated by the Verified Complaint in this matter, this permits guardians and other fiduciaries to create their own standards based upon their own subjective opinion of what is in the best interest of the child. See Verified Complaint. The allegations in the underlying complaint are confirmed by Chief Judge Lippman and the two official reports issued by the Unified Court System itself. See Exhibits K.

23. We restate herein the major factual allegations giving rise to the due process and Civil Rights violations in the Verified Complaint.

Forensic Psychiatrist Stephen B. Billick

24. 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.

25. 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 family court proceeding involving his brother. See Exhibit O.

b. Upon information and belief and in numerous cases known to Marks, Dr. Billick has a established record of favoring male parents 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 her 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 is an illegal activity and therefore constitutes non-admissible evidence for purposes of trial.

Lawyers for Children's, Inc. and Molloy Murphy

26. The conduct of LFC and Murphy violates the New York State and United States Constitutions and procedural and substantive due process. See Exhibit I.

27. 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.

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

c. By and through their absolute failure to even visit once with the infant children since November 2003.

Judge Arlene D. Goldberg

28. 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.

29. 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 to her current fiancee 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 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 inadmissable 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.

30. As my firm was just retained over the Memorial Day weekend holiday, we have not had the opportunity to retain an expert witness to review the practices and procedures in the underlying Family Court Action and the New York State law generally. However, we are actively attempting to locate an expert and have been in contact with a

nationally reknown expert on the issue of violations of constitutional rights by the appointment of law guardians. Both the resume and a law review article from the Loyola School of Law, Law Journal by Richard Ducote are annexed hereto. See Exhibit C, D. Mr. Ducote is also a recognized expert on the purported theory of "parental alienation" so heavily relied on by Judge Goldberg. I can affirm he believes as do many that this theory is quackery as opposed to science. We intend on supplementing these papers with additional support for the likelihood of success on the merits by expert opinion of Richard Ducote and/or other recognized experts.

31. Although the defendants deserve credit for admitting a problem exists and taking steps to correct those problems, reform is more than one year away. Plaintiffs such as those herein are left in a vacuum, without remedy as a biased and unconstitutional system exists at the present time. The result to Plaintiff herein is the removal of her two children from her custody and monitoring and supervision of all contact between her and the children in the future. All ordered by a Judge who did not enter final judgment precluding appeal and a stay in the Appellate Division.

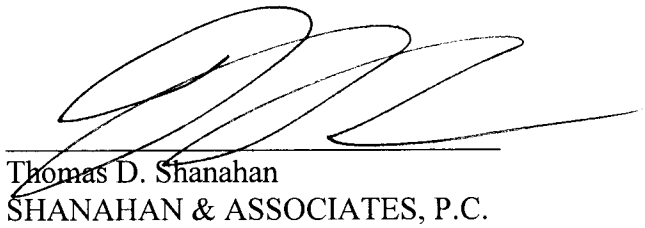
32. The result of systemic abuse, failure of fiduciaries to comply with existing filing requirements and bias based upon payment of fees and other factors results in a deprivation of due process and constitutional protection for the infant children such as those herein who will be taken away from their mother, the only care-giver they have ever known and flown to California absent an order of this Court.

33. Based upon the foregoing and allegations in the Verified Complaint, we respectfully submit that Plaintiff has established a likelihood of success on the merits and

the stay and temporary restraining order is properly issued by this Court.

WHEREFORE, the relief sought in the Order to Show Cause is properly granted, and this Court should enter such additional and further relief as deemed just, equitable and proper.

Dated: New York, New York
May 31, 2004



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