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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT MALEK, ROBERT MALEK C/O M.M.

VS.

NEW YORK STATE UNIFIED COURT SYSTEM

NYC CHILDREN, AKA ACS (ADMINISTRATION FOR CHILDRENS SERVICES)

NY STATE OFFICE OF CHILDREN AND FAMILY SERVICES

NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL

JANET DIFIORE

CASE NUMBER : 21CV1230

SHEILA POOLE

JACQUELINE WILLIAMS

NOTICE OF MOTION /

BEVERLY STANLEY

MOTION TO DISQUALIFY ATTORNEY GENERAL TO

ROSMIL ALMONTE

REPRESENT FAMILY COURT JUDGE, (ACS COURT)

TRAVIS JOHNSON

JACQUELINE WILLIAMS

MARGARET INGOGLIA

**PLANTIFFS NOTICE OF MOTION / MOTION TO DISQUALIFY ATTORNEY GENERAL FROM
REPRESENTING FAMILY COURT (ACS COURT) JUDGE JACQUELINE WILLIAMS**

MOTION

1. ROBERT MALEK, ROBERT MALEK C/O M.M., MOVES FOR AN ORDER TO DISQUALIFY ATTORNEY GENERAL , INCLUDING ANY AND ALL ASSIGNEES FROM THEIR OFFICE IN REPRESENTING FAMILY COURT JUDGE, JACQUELINE WILLIAMS.

2. THE GROUNDS FOR THIS MOTION ARE :

A. LAST YEAR, DURING CASE NUMBER 21 CV 5532, ATTORNEY GENERAL JAMES ASSIGNED SHI SHI WANG TO DEFEND FAMILY COURT (ACS COURT) JUDGE JACQUELINE WILLIAMS.

B. I NAVIGATED TO THE LINKEDIN PAGE FOR LETITIA JAMES AND NOTICED THAT ON HER LINKEDIN SHE WAS ASSOCIATING HERSELF WITH STUTMAN, STUTMAN AND LICHENSTEIN. A BOUTIQUE FAMILY LAW FIRM THAT LITIGATES BEFORE FAMILY COURT JUDGES WHOM SHE REPRESENTS IN NYC. **EXHIBIT A**

C. I NOTED THIS UNTO THE CASE ON 21 CV 5532...

EXHIBIT B

D. SINCE THEN, LETITIA JAMES CONTINUES TO TAKE PART IN SUCH MISCONDUCT.. **EXHIBIT C.** WHICH IS HER MOST RECENT LINKEDIN.

E. LETITIA JAMES AND STUTMAN DID NOT RESPOND TO THE EMAIL SENT TO THEM. I AM NOT SURPRISED.

EXHIBIT D.

E. ATTORNEY GENERAL LETITIA JAMES IS OPERATING A WE LITIGATE IN FRONT OF FAMILY COURT JUDGES BY DAY, WE PROTECT THE FAMILY COURT JUDGES AT NIGHT WITH AN APPARENT PAY TO PLAY SCAM WITH A BOUTIQUE (HIGH DOLLAR) LAW FIRM AS WAS PROMOTED ON HER WEBSITE.

F. FAMILY COURT JUDGES KNOW THAT THEY TAKE CARE OF THE JAMES FIRM AND JAMES TAKES CARE OF THEM.

G. AN ATTORNEY GENERAL IS SUPPOSED TO HAVE THE HIGHEST STANDARD OF TRUST AND ETHICS. IF THIS CASE PROCEEDS BEFORE A JURY, THE JURY WILL BE PREJUDICED BY A DEFENDANT JUDGE WITH UNDESERVED HIGH STATURE (WILLIAMS), BEING DEFENDED BY THE TOP COP OF THE STATE WHOM HAS THE LOWEST LEVEL OF STATURE, THE CORRUPT COPS OF THE STATE.

H. CAN YOU IMAGINE THE JUDGES OF NORTHERN DISTRICT FEDERAL COURT PROMOTIONG THEIR FAVORITE LOCAL FEDERAL LAW FIRM ON THEIR PROFILE WHOM LITIGATED BEFORE THEM AND WHOM THEY PROTECTED FOR MISCONDUCT? THIS IS CLEARLY IMPROPER AND WHAT JAMES IS DOING IS A CONFLICT OF INTEREST FOR HER TO BE REPRESENTING FAMILY COURT JUDGES.

I. NOT TO STOP HERE, THROUGH THE BILLIONS OF DOLLARS OF TITLE 4 FUNDING PUMPED INTO THE CORRUPT ACS MACHINE, JUDGE JACQUELINE WILLIAMS ALONG WITH ACS IGNORES THE LAWS THAT PROTECT THE STATES FINANCIAL INTEGRITY AND PARENTS REPUTATION. THERE IS TO BE AN AFFIDAVIT IF MORE THAN A THOUSAND DOLLARS IS SPENT. AFTERALL, YOU DONT WANT A PARENT TO BE GOING TO SUPERVISED VISITATION AT YOUR CONTRACTED VISITATION RESOURCE FOREVER !. OR DO YOU ? OF COURSE YOU DO. CORRUPT ACS COURT

JUDGES ALONG WITH ACS PUMP MILLIONS INTO THE SUPERVISED VISITATION BLACK HOLE WHERE PARENTS LANGUISH INDEFINITELY AS INFINITE MONEY, IN VIOLATION OF LAW IS PROVIDED TO THEM. OF COURSE THESE SOCIAL WORKERS DONT WANT TO SWEAR AS TO WHY YOU HAVE TO BE THERE FOREVER SO THE CYCLE OF GOVERNMENTAL FISCAL ABUSE CONTINUES AS PARENTS AND CHILDREN SUFFER THE CONSEQUENCES OF PARENTAL ALIENATION, BURIED BENEATH GOVERNMENTAL KICKBACKS AND GRAFT. WHEN THE JUDGE AND THE GOVERNMENT BREAKS THE LAW FOR YOU AND GIFTS YOU MILLIONS OF DOLLARS, DO YOU REALLY THINK YOU ARE GOING TO SAY TO ACS AND THE JUDGE, " NO THIS PARENT IS FINE ? OF COURSE NOT. THEY ARE ALL ON THE TAKE AND WHOEVER DOESNT WANT TO PLAY BALL IS CAST ASIDE FOR THOSE THAT DO. MIGHT AS WELL PLAY OR THEY WILL GET SOMEONE ELSE TO PLAY.

J. ATTORNEY GENERAL LETITIA JAMES FOR THESE REASONS AND MANY OTHERS SUCH AS ME PLEADING FOR HELP TO HER MY DAUGHTER IS IN MY OPINION A CORRUPT, LAWLESS, CHILD ABUSE FACILITATING DISGRACE. I HAD BOUGHT THE DOMAIN NAME, IMPEACHLETITIAJAMES.COM AND LET HER KNOW I WILL EXPOSE HER. I BELIEVE IT IS BECAUSE OF ME THAT SHE DROPPED HER RUN FOR OFFICE.

K. ATTORNEY GENERAL LETITIA JAMES SHOULD NOT BE DEFENDING OR REPRESENTING ANY FAMILY COURT JUDGE, PERIOD. IT IS A CONFLICT OF INTEREST.

L. I SUFFERED AT SUPERVISED VISITATION FOR APPROXIMATELY 9 MONTHS, BLOWING ABOUT 10X PAST THE THOUSAND DOLLAR LIMIT THE LAW PROVIDES FOR WITHOUT AFFIDAVIT.

M. NOW..... PLEASE VIEW ACS COMPLAINTS.COM AND VIEW ALL MY DAUGHTERS ABUSE. STARTING JAN 2019, I WAS VISITING WITH MY DAUGHTER AT SUPERVISED VISITATION, COMPREHENSIVE FAMILY SERVICES, THE CONTRACTED RESOURCE ACS AND JUDGE WILLIAMS PUMP MASSIVE AMOUNTS OF ILLEGAL MONEY TO, KNOWINGLY BY LETITIA JAMES. OF COURSE CFS GORRASI WOULDNT DARE REPORT ANY OF MY DAUGHTERS ABUSE THAT HAD OCCURRED UNDER ACS SUPERVISION. HE WAS A MANDATED REPORTER AND REPORTED NOTHING TO COVER FOR HIS AND HIS COMPANY'S FINANCIAL CASH GAIN.

N. OF NOTE OF COURSE WHICH CAN BE SEEN ON ACSCOMPLAINTS.COM, (CRIMES UPON MY DAUGHTER 6) IS WHERE YOU CAN SEE THAT CFS MAKES YOU SIGN NO PHOTOGRAPHY AND THAT YOU CANT RECORD. NO SURPRISE.YOU SHOULDN'T HAVE ANY EVIDENCE OF YOUR TRUE CONDUCT AND YOUR CHILDS ABUSE. THANKFULLY, I RECORDED EVERYTHING.....

VIEW EXHIBIT E.

3. THIS MOTION IS BASED ON THE PLEADING AND PAPERS FILED IN THIS CASE AND THE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES :

I. EXHIBITS A - E.

J. CASE LAW :

MEMORANDUM OF POINTS AND AUTHORITIES

Although a party has the right to select and retain counsel of one's own choosing, this right is not absolute (see *Abela v. Heyns*, 2017 WL 783471, at *10 (E.D. Mich. Mar. 1, 2017)).

There is no federal statute or rule that governs the disqualification of counsel after litigation has commenced. Instead, federal courts rely on their inherent authority to supervise the conduct of lawyers when determining whether to disqualify counsel from representing a party (*Thomas v. Keystone Real Estate Grp. LP*, 2015 WL 1471273, at *7 (M.D. Pa. Mar. 31, 2015)). Determining whether to disqualify counsel is within a court's discretion (*Epikhin v. Game Insight N. Am.*, 2015 WL 2229225, at *3 (N.D. Cal. May 12, 2015); *State Comp. Ins. Fund v. Drobot*, 192 F. Supp. 3d 1080, 1090 (C.D. Cal. 2016)).

Courts may disqualify counsel when the moving party makes a clear showing that continued representation would be impermissible (see *Innovative Memory Sols., Inc. v. Micron Tech., Inc.*, 2015 WL 2345657, at *1 (D. Del. May 15, 2015)). This allows courts to maintain public confidence in the judicial system and avoid the appearance of impropriety.

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT ROBERT MALEK, PLAINTIFF WILL BRING THIS MOTION FOR HEARING BEFORE THIS COURT ON 5-02-2022 AT 9 AM IN NORTHERN DISTRICT FEDERAL COURTHOUSE, 445 BROADWAY, ALBANY, NEW YORK.

Respectfully Submitted,



Robert Malek

1936 HEMPSTEAD TURNPIKE # 109

EAST MEADOW, NEW YORK 11554

929 441 8429

ACSCOMPLAINTS@YAHOO.COM

DATED : 4-14-22

EXHIBIT A

Letitia James



Letitia James

200 West 57th Street, Suite 1203, 10019

Letitia James Lawyer Public NY
New York, New York, United States

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Letitia James

Letitia James

200 West 57th Street, Suite 1203, 10019

Letitia James Lawyer Public NY
New York, New York, United States

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STUTMAN STUTMAN & LICHTENSTEIN, LLP



Stutman Stutman & Lichtenstein, LLP

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(212) 226-6644

EXHIBIT B

LETITIA JAMES

" N.Y.S. ATTORNEY GENERAL BY DAY, FAMILY LAWYER BY NIGHT "

PAGE 1 STATES THAT JAMES HAS BEEN PART OF PUBLIC LAWYER NEW YORK FROM JAN 2000 TO PRESENT, 21 YEARS , 8 MONTHS.

WHILE PAGE 3 DENOTES BARKATLAWYERPUBLICNY.COM , SUCH LAW FIRM NO LONGER EXISTS. HOWEVER, ADVOCATE AND LICHTENSTEIN DOES WHICH CAN BE SEEN AT BOTTOM PARAGRAPH.

LICHTENSTEIN IS ALSO INVOLVED WITH STUTMAN AND STUTMAN.

ALL ARE INVOLVED WITH FAMILY LAW.

LITITIA JAMES CAME IN TO DEFEND THE FAMILY COURT (ACS AND OFFICE OF CHILDREN AND FAMILY SERVICES JUDGES) ON CASE NUMBER 21 CV 5532.

SO WHAT WE SEE HERE IS JAMES PLAYING DEFENSE LAWYER FOR HER FAMILY COURT JUDGES BY DAY IN FEDERAL COURT AND LAWYER IN APPEARANCE IN FRONT OF THE FAMILY COURT JUDGES BY NIGHT.

HER GAME IS TO NOT ACTUALLY APPEAR BEFORE THESE JUDGES BUT TO INVOLVE HERSELF WITH FIRMS THAT DO.

A YOU HELP ME, I PROTECT YOU, SCENARIO.

MEANWHILE, FUNDS ARE TAKEN FROM THE FEDERAL GOVERNMENT TO DISSEMINATE FALSE CRIMINAL REPORTS ON PARENTS OF WHICH THE JUDGES KNOWINGLY UPHOLD WITH THE PROTECTIVE ASSISTANCE OF THE NYS ATTORNEY GENERAL , LITITIA JAMES.

BEST REGARDS,


ROBERT MALEK

EXHIBIT C



Letitia James

200 West 57th Street, Suite 1203, 10019

- Letitia James Lawyer Public NY
New York, New York, United States · [Contact info](#)

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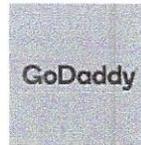
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EXHIBIT D

What is your connection with letitia james ?

From: ROBERT MALEK (acscomplaints@yahoo.com)

To: contact@ssl1lp.com; letitia.james@ag.ny.gov; hevesia@nyassembly.gov; jdifiore@nycourts.gov; sheila.poole@ocfs.ny.gov; Shi-Shi.Wang@ag.ny.gov

Date: Thursday, March 31, 2022, 10:34 PM EDT

Stutuman stutman and lichenstein,

I saw your firm referenced on the attorney generals LinkedIn page last year. Since then, the attorney general removed your law firm from her profile after i exposed this. The attorney general whom defends family court judges appears to be associated with your law firm whom litigates before them.

Such, in my legal opinion destroyed the due process rights of every adversary you litigated against in family and supreme court and every one of those cases should be dismissed and re litigated out of state in federal court ONLY.

You were referred to as a boutique law firm and in my belief were probably part of a PAY FOR PLAY scheme with the attorney general herself.

Possibly you could shine some light on this matter for me. It is clear to me that james defends family court judges by day and then litigates before them to her and your profitable advantage with stutman, stutman and lichenstein at night. Now, I could be wrong but this looks REAL BAD IN MY OPINION.

I expect Andrew Hevesi, Sheila poole and Janet difiore will contact the governor as will I as to the results of this inquiry to clear up this issue.

As for the attorney general, what do you have to say to help clarify why you took them off your site after I exposed this and to the overall issues presented in this email.

Let the truth come to light, here and now.

Thank you,

Sincerely,
Robert Malek
Acs complaints.com

Sent from Yahoo Mail on Android

EXHIBIT E



robert malek <abc75abc@gmail.com>

Confirmation of Receipt of Complaint #1-220199252

3 messages

taxpayer.complaint@ag.ny.gov <taxpayer.complaint@ag.ny.gov>

Mon, Dec 28, 2020 at 7:32 AM

To: abc75abc@gmail.com

Thank you for submitting your complaint to the Taxpayer Protection Bureau. Attached please find a copy for your records. Your assistance is vital to our efforts to serve the people of the State of New York.

The Attorney General takes seriously the legal issues of all New Yorkers, and every complaint to this office is carefully considered. Please be assured that we will thoroughly evaluate each of the issues you have raised, and determine if we, or any bureau within our office, can provide assistance. We may also share your submission with other local, state, or federal agencies, as appropriate.

We will contact you if we require any additional information. Please do not submit follow-up inquiries through the complaint form, which is for new submissions only. If contacting our office regarding this submission, please refer to Intake # 1-220199252. Inquiries may be made by phone at (800) 771-7755, or by email.

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

2 attachments**EVIDENCE OF ACS STEALING MILLIONS FROM THE GOV.pdf**

11942K

**Form 12-28-2020T07-32-17.pdf**

181K

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES
STATE OF NEW YORK DEPARTMENT OF LAW



TAXPAYER PROTECTION BUREAU
28 Liberty Street, 15th Floor
New York, NY 10005
Tel: (212)416-8300 | <http://www.ag.ny.gov>

Intake Id 1-220199252

Your Information

First Name robert
Last Name malek
Street Address 2609 east 14th street # 304
Address Line 2
City/Town brooklyn
State NY
County KING
Zip/Postal Code 11235
Phone Number 929-441-8429
Email Address abc75abc@gmail.com

Subject of Your Complaint

Are you complaining about an Individual or Entity? COMPANY
Business Name acs, judge williams, legal aid and their contracted resources
Street Address 150 william street
Address Line 2
City/Town ny
State NY
County NEWY
Zip/Postal Code 10038
Phone Number
Email Address david.hansell@acs.nyc.gov

Additional Complaint Information

Has the government been the victim of false or fraudulent conduct? Y
Identify the government agency or subdivision that was victimized i dont know where this money comes from exactly but i do know it is provided by state and fed gov
About how much money has the government lost? 10,000,000
Have you consulted an attorney? N
Is there any legal action pending related to the facts of this complaint? N
Complaint Description

PLEASE VIEW ATTACHED FILE. IN ORDER FOR A PARENT TO BE KEPT FOR MORE THAN 1000-1350 FOR SUPERVISED VISITATION WITH THEIR CHILD WITH A CONTRACTED RESROUCE, THERE HAS TO BE AN AFFIDAVIT/S AS TO WHY SUCH FUNDS FROM THE GOV HAVE TO BE APPROPRIATED. ACS, LEGAL AID, THEIR CONTRACTED RESOURCES SUCH AS CFS, JUDGE WILLIAMS ETC. IGNORE THIS LAW AND GIFT THEIR CONTRACTED AGENCIES WITH MILLIONS OF DOLLARS WITHOUT AUTHORIZATION. NONE OF THE REPORTS OR STATEMENTS THESE CONTRACTED RESOURCES MAKE ARE BEING SWORN TO, ARE FALSE AND KEEP THE PARENT AND CHILD IN SUPERVISED VISITATION INDEFINITELY UPON REPORTS THAT ARE FALSE AND NOT SWORN TO AS PROVIDED BY LAW. PARENTS ARE TAKEN FROM THEIR CHILDREN, BY FALSE REPORTING, CHILDREN ARE PUT IN TO FOSTER CARE, PARENTS ARE KEPT IN SUPERVISED VISITATION INDEFINITELY WHILE NO SWORN STATEMENTS AS TO WHY ARE PROVIDED AS REQUIRED BY LAW. ACS GIFTS THEIR CONTRACTED RESOURCES MILLIONS OF DOLLARS. IN MY CASE ALONE, APPROX 10K WITHOUT AUTHORIZATION UNTIL I STOPPED IT BY TELLING KEVIN GORRASI I WAS GOING TO SUE HIM FOR FALSE REPORTING. IF YOU TAKE 10,000 DOLLARS AND MULTIPLY IT BY 1000 OTHER PARENTS, WHICH IS A GROSS UNDERSTATEMENT, YOU HAVE 10 MILLION DOLLARS.

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EVIDENCE OF ACS STEALING MILLIONS FROM THE GOV.pdf

In filing this complaint, I understand that:

The Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from misleading or unlawful business practices. My filing this complaint does not mean that the Attorney General has initiated a lawsuit or proceeding on my behalf or that it will do so.

The Attorney General cannot give me legal advice or represent me in court. If I have any questions concerning my legal rights or responsibilities, I should contact a private attorney.

In order to resolve my complaint, the Attorney General may send a copy of my complaint and any documents I provide to the person or business about whom I am complaining and I authorize that person or business to release information concerning my complaint to the Attorney General.

The Attorney General works with other state, local and federal government agencies to investigate complaints and coordinate law enforcement and may also share my complaint with them. In addition, the Attorney General may use information from my complaint in legal proceedings to establish violations of law.

Any false statement made in this complaint are punishable as crimes, including under Section 175 and/or Section 210 of the Penal Law.

Signature

ROBERT MALEK

Date of Affirmation

12-28-2020

At a term of the Family Court of the State of New York, held in and for the County of Kings, at 330 Jay Street, Brooklyn, NY 11201, on October 22, 2018

PRESENT: Hon. Jacqueline D. Williams

In the Matter of

Margaret Michelle Malek (DOB: 10/29/2014),

A Child under Eighteen Years of Age
Alleged to be Neglected by

Robert Malek,

Respondent.

File #: 235429

Docket #: NN-19410-18

CPS #: 5236894

**ORDER TO OBSERVE AND
EVALUATE VISITS**

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

IT IS HEREBY ORDERED that Richard Spitzer, LMSW, whose office is located at Comprehensive Family Services, 291 Broadway, Suite 808, New York, NY 10007, and whose telephone number is (212) 267-2670, observe and evaluate three (3) visits between the Father, Robert Malek, and the child, Margaret Malek, d.o.b. 10/29/2014; and it is further

ORDERED that upon receipt of a copy of this order, the parties shall telephone the social worker, schedule appointments and cooperate in all respects with the court ordered visitation. Each of the parties may be directed to bear the cost for any missed or canceled appointments regardless of whether the fees for the visits are being paid in whole or in part pursuant to the County and Judiciary Laws; and it is further

ORDERED that the parties shall sign releases to enable the social worker to speak with any healthcare professional, therapist or school personnel and obtain any other records, reports or material relevant to the parties or the child that the social worker believes will be of assistance in conducting the visits; and it is further

Materials Provided

ORDERED that, annexed to this Order, provided to the social worker is a copy of:

1. Neglect Petition, Docket NN-19410-18, filed 7/31/18;
2. Order Releasing subject Child to Mother, dated 7/31/18;
3. Answer to Neglect Petition, dated 9/5/18;
4. Amended Answer to Neglect Petition, dated 9/19/18;
5. Temporary Order of Protection, dated 10/16/18
6. Order Regarding Visitation, dated 10/16/18; and it is further

ORDERED that the appointed social worker shall meet individually with the named parties to conduct an intake session and then observe and evaluate three (3) interactions up to two hours in length with the above-named child and her father; and it is further

ORDERED that after making appropriate inquiry into the financial status of the parties, and being satisfied that both litigants are financially unable to pay the costs of the services provided for herein, compensation for said court ordered visits and any court appearances in connection therewith, shall be paid proportionately to the ratio of adults seen and evaluated (Article 18-B, Section 722-C of the County Law) and the child(ren) seen and evaluated (Section 35 of the Judiciary Law) at a rate not to exceed \$75.00 per hour to a maximum amount of \$1,350.00; and it is further

ORDERED that a finding of extraordinary circumstances has been made by the Court to warrant compensation to the forensic evaluator in an amount over \$1000; and it is further

ORDERED that in this case, the Court is directing that a total of two (2) adults be evaluated and a total of one (1) child(ren) be evaluated, and therefore payment shall be 1/3 pursuant to the County Law, on behalf of the father, Robert Malek, and 1/3 to Brooklyn Defenders Service, on behalf of the mother, Margaret Ingoglia, and 1/3 to the Legal Aid Society, pursuant to the Judiciary Law; and it is further

ORDERED that no additional compensation will be paid without the prior submission of a supplemental affidavit from the social worker explaining the reasons why these services cannot be completed within the maximum amount provided in this Order. Fees above those authorized in this Order are not to be incurred by the social worker unless and until an Order has been obtained from the Court modifying the amounts set forth herein and said Order has been served upon the individual so appointed; and it is further

ORDERED that when a written report is completed, the written report shall be submitted to the Court. The social worker shall not provide copies of the report to the parties absent permission from the Court; and it is further

ORDERED that the matter is calendared for a status report from the social worker on **October 30, 2018**. The status report should be faxed to the Court [347-401-9689] on the business day prior thereto. Counsel and the parties are directed to appear.

Dated: October 22, 2018

ENTER

201810221555473DWILLIAMS71F9F268444A5EAS3988280F029CF8

Hon. Jacqueline D. Williams

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

B

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New York Consolidated Laws, Judiciary Law - JUD § 35.

Assignment of counsel to indigent persons and appointment of physicians in certain proceedings

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1. a. When a court orders a hearing in a proceeding upon a writ of habeas corpus to inquire into the cause of detention of a person in custody in a state institution, or when it orders a hearing in a civil proceeding to commit or transfer a person to or retain him in a state institution when such person is alleged to be mentally ill, mentally defective or a narcotic addict, or when it orders a hearing for the commitment of the guardianship and custody of a child to an authorized agency by reason of the mental illness or mental retardation of a parent, or when it orders a hearing to determine whether consent to the adoption of a child shall be required of a parent who is alleged to be mentally ill or mentally retarded, or when it orders a hearing to determine the best interests of a child when the parent of the child revokes a consent to the adoption of such child and such revocation is opposed or in any adoption or custody proceeding if it determines that assignment of counsel in such cases is mandated by the constitution of this state or of the United States, the court may assign counsel to represent such person if it is satisfied that he is financially unable to obtain counsel. Upon an appeal taken from an order entered in any such proceeding, the appellate court may assign counsel to represent such person upon the appeal if it is satisfied that he is financially unable to obtain counsel.

b. Upon an appeal in a criminal action or in a proceeding in the family court or surrogate's court wherein the defendant or person entitled to counsel pursuant to the family court act or surrogate's court procedure act, is financially unable to obtain counsel, the court of appeals or the appellate division of the supreme court may assign counsel other than in the manner as is prescribed in [section seven hundred twenty-two of the county law](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000065&refType=LQ&originatingDoc=1122c54a01ac711e98092c7d0d8af) ([https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000065&refType=LQ&originatingDoc=1122c54a01ac711e98092c7d0d8af)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000065&refType=LQ&originatingDoc=1122c54a01ac711e98092c7d0d8af](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000065&refType=LQ&originatingDoc=1122c54a01ac711e98092c7d0d8af) only when it is satisfied that special circumstances require such assignment.

2. The chief administrator of the courts may enter into an agreement with a legal aid society for the society to provide assigned counsel in the proceedings specified in subdivision one of this section. The agreement shall be in a form approved by the chief administrator and shall provide a general plan for a program of assigned counsel services to be provided by such society. It shall also provide that the society shall be reimbursed on a cost basis for services rendered.

3. No counsel assigned pursuant to this section shall seek or accept any fee for representing the person for whom he or she is assigned without approval of the court as herein provided. Whenever it appears that such person is financially able to obtain counsel or make partial payment for the representation, counsel may report this fact to the court and the court may terminate the assignment or authorize payment, as the interests of justice may dictate, to such counsel. Counsel assigned hereunder shall at the conclusion of the representation receive compensation at a rate of seventy-five dollars per hour for time expended in court, and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred. For representation upon a hearing, compensation and reimbursement shall be fixed by the court wherein the hearing was held and such

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compensation shall not exceed four thousand four hundred dollars. For representation in an appellate court, compensation and reimbursement shall be fixed by such court and such compensation shall not exceed four thousand four hundred dollars. In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

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4. In any proceeding described in paragraph (a) of subdivision one of this section, when a person is alleged to be mentally ill, mentally defective or a narcotic addict, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court. Such compensation shall not exceed two hundred dollars if one psychiatrist, psychologist or physician is appointed, or an aggregate sum of three hundred dollars if two psychiatrists, psychologists or physicians are appointed, except that in extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

4-a. In any proceeding under article ten of the mental hygiene law, the court which ordered the hearing may appoint no more than two psychiatrists, certified psychologists or physicians to examine and testify at the hearing upon the condition of such person. A psychiatrist, psychologist or physician so appointed shall, upon completion of his or her services, receive reimbursement for expenses reasonably incurred and reasonable compensation for such services, to be fixed by the court in accordance with subdivision (a) of section 10.15 of the mental hygiene law (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000105&refType=SP&originatingDoc=1122ca2c01ac711e98092c7d0d8a02>

5. All expenses for compensation and reimbursement under this section shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose. Any rules and orders respecting the assignment and compensation of counsel, and the appointment and compensation of psychiatrists, psychologists or physicians pursuant to this section and the form and manner of processing of a claim submitted pursuant to this section shall be adopted by the chief administrator. Each claim for compensation and reimbursement pursuant to subdivisions three and four of this section shall be submitted for approval to the court which made the assignment or appointment, and shall be on such form as the chief administrator may direct. After such claim is approved by a court, it shall be certified to the comptroller for payment by the state, out of the funds appropriated for that purpose.

6. Assigned counsel and guardians ad litem appointed pursuant to the provisions of title two of article nine-B of the social services law shall be compensated in accordance with the provisions of this section.

7. Whenever the supreme court or a surrogate's court shall appoint counsel in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceeding were pending in family court, such court would be authorized by section two hundred forty-nine of the family court act (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000093&refType=LQ&originatingDoc=1122cc9d01ac711e98092c7d0d8a02>) to appoint an attorney for the child, such counsel shall be compensated in accordance with the provisions of this section.

8. Whenever supreme court shall exercise jurisdiction over a matter which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceedings were pending in family court, such court would be required by section two hundred sixty-two of the family court act (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000093&refType=LQ&originatingDoc=1122cc9d11ac711e98092c7d0d8a02>) to appoint counsel, supreme court shall also appoint counsel and such counsel shall be compensated in accordance with the provisions of this section.

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persons and appointment of physicians in certain proceedings on Westlaw

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NOTE: THERE ARE ISSUES WITH THIS REPORT + TWO OTHERS.
NOTICE OF CLAIM FILED. AFFIDAVIT TO REPORT FORM OF FARMER

NY CLS County § 722-c

Current through 2020 released Chapters 1-56, 58-169

*New York Consolidated Laws Service > County Law (Arts. 1 — 25) > Article 18-B
Representation of Persons Accused of Crime or Parties Before the Family Court or Surrogate's
Court (§§ 722 — 722-f)*

§ 722-c. Services other than counsel

Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of one thousand dollars per investigative, expert or other service provider. 1000

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source.

History

Add, L 1965, ch 878, § 1; amd, L 1975, ch 682, § 12; L 1977, ch 682, § 9; L 1999, ch 453, § 27; L 2003, ch 62, § 3 (Part J), eff Jan 1, 2004.

Annotations

Notes

Editor's Notes:

Laws 2003, ch 62, § 38(a) (Part J), eff May 15, 2003, provides as follows:

§ 38. This act shall take effect immediately; provided that:

(a) sections one, two, three and five of this act shall take effect January 1, 2004 and shall apply to representation provided on or after such date; provided, however, a county or a city in which a county is wholly contained may, by local law, elect to have the provisions of section two, three or five of this act take effect prior to such date;.

Notes to Decisions

1. In general
2. Ex parte application for order
3. Prior court authorization
- 4.—Nunc pro tunc authorization
5. Services not necessary
6. Claim for compensation, generally
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10. Appointment of psychiatrist
11. Appointment of expert

1. In general

Assigned expert compensation orders issued under CLS County § 722-c are technically appealable, but provide no basis for justiciable review, since such orders are essentially administrative in nature; although not dispositive, formal appellate review of compensation orders is impractical since appeals courts are several steps removed from circumstances in which services were rendered, and thus are not well positioned to assess wisdom of trial judges' discretionary choices. People v Townsend, 87 N.Y.2d 191, 638 N.Y.S.2d 415, 661 N.E.2d 988, 1995 N.Y. LEXIS 4746 (N.Y. 1995).

County L § 722-c and § 722-e should have been applied to expedite defendant's motion for investigation where potential defense witnesses refused to speak to defense attorney regarding questions material to defense. People v Irvine, 40 A.D.2d 560, 334 N.Y.S.2d 502, 1972 N.Y. App. Div. LEXIS 4001 (N.Y. App. Div. 2d Dep't 1972).

It was not error for court to refuse to appoint investigator to obtain defendant's presence at hearing to reconstruct lost sentence minutes where defense counsel did not request investigator until end of reconstruction hearing and only did so after court inquired as to defendant's absence, and defense counsel had already stated that defendant had no recollection as to issue to be determined (namely, whether motion had been made to withdraw plea prior to imposition of sentence). People v Filomeno, 138 A.D.2d 734, 526 N.Y.S.2d 548, 1988 N.Y. App. Div. LEXIS 3323 (N.Y. App. Div. 2d Dep't), app. denied, 71 N.Y.2d 1026, 530 N.Y.S.2d 561, 526 N.E.2d 53, 1988 N.Y. LEXIS 2210 (N.Y. 1988).

Nothing in CLS County § 722-c invalidates authorization of services initiated by court rather than counsel. People v Townsend, 207 A.D.2d 307, 615 N.Y.S.2d 406, 1994 N.Y. App. Div. LEXIS 8362 (N.Y. App. Div. 1st Dep't 1994), aff'd, 87 N.Y.2d 191, 638 N.Y.S.2d 415, 661 N.E.2d 988, 1995 N.Y. LEXIS 4746 (N.Y. 1995).

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Private legal aid society retained by county to represent defendant in his criminal appeal pursuant to county plan for representation (established under CLS County § 722) should pay for trial transcript out of its own budget, irrespective of trial court's prior order authorizing society to spend up to \$300 for completion of transcripts, to be reimbursed by county under CLS County § 722-c; agency established under county plan is required to represent indigent defendant on his appeal, including investigative, expert and other services necessary for adequate defense. People v Stott, 137 Misc. 2d 896, 522 N.Y.S.2d 812, 1987 N.Y. Misc. LEXIS 2733 (N.Y. County Ct. 1987).

Where government holds monopoly of expertise on matter that reasonably bears on defense in criminal action, due process requires that defendant be afforded access to this expertise whether or not he has funds to hire private expert. People v Evans, 141 Misc. 2d 781, 534 N.Y.S.2d 640, 1988 N.Y. Misc. LEXIS 692 (N.Y. Sup. Ct. 1988).

Defendant, who was charged with setting fire to 2 motor vehicles and sought to develop evidence that vehicles did not belong to complainants, was entitled to order directing Auto Crime Division of New York City Police Department to assist defense by inspecting vehicles for their nonpublic vehicle identification numbers since experts able to examine such numbers existed only in such division and in national auto theft bureau, whose services were available only to member insurance companies. People v Evans, 141 Misc. 2d 781, 534 N.Y.S.2d 640, 1988 N.Y. Misc. LEXIS 692 (N.Y. Sup. Ct. 1988).

In murder prosecution, court-appointed psychiatrist had affirmative obligation to inform court and defense counsel as soon as he realized that issues relating to brain damage sustained by defendant as child were likely to be relevant, and that he had limited ability to provide required expert services; by accepting responsibility to provide professional services that he knew or should have known he was not competent to perform, psychiatrist violated 8 NYCRR § 29.1(b)(9). People v McLane, 166 Misc. 2d 698, 631 N.Y.S.2d 976, 1995 N.Y. Misc. LEXIS 388 (N.Y. Sup. Ct. 1995).

Court-appointed psychiatrist did not file timely final report where report submitted by him on date specified for final report did not reflect all information on which he intended to rely in that it opined that defendant was not responsible by reason of mental disease or defect, but indicated that another interview of defendant was needed and stated that additional information and consultations would be important if case were to proceed to trial. People v McLane, 166 Misc. 2d 698, 631 N.Y.S.2d 976, 1995 N.Y. Misc. LEXIS 388 (N.Y. Sup. Ct. 1995).

Trial court did not deny defendant's right to due process when it denied her request to hire an investigator at public expense, pursuant to N.Y. County Law § 722-c, as defendant only asserted that an investigator would be helpful, but she failed to show necessity. People v Rockwell, 18 A.D.3d 969, 794 N.Y.S.2d 726, 2005 N.Y. App. Div. LEXIS 5185 (N.Y. App. Div. 3d Dep't), app. denied, 5 N.Y.3d 768, 801 N.Y.S.2d 262, 834 N.E.2d 1272, 2005 N.Y. LEXIS 2115 (N.Y. 2005).

Even without funds from a petitioner's family or the court, counsel had an ethical obligation to conduct an investigation of the crime where it may have undermined pivotal testimony presented by the prosecution in the petitioner's murder trial. Thomas v Kuhlman, 255 F. Supp. 2d 99, 2003 U.S. Dist. LEXIS 5498 (E.D.N.Y. 2003).

2. Ex parte application for order

Although defendant who is not represented by the public defender may need an order pursuant to county law section which provides for reimbursement for expenses of defense other than attorney fees in order to enable him to prepare a defense, attorney's affidavit alone is insufficient to support ex parte application for such an order. People v Jackson, 80 Misc. 2d 595, 363 N.Y.S.2d 288, 1975 N.Y. Misc. LEXIS 2221 (N.Y. County Ct. 1975).

In a filiation proceeding brought by the Department of Social Services, a putative father's motion for authorization to obtain the services of an expert witness pursuant to County Law § 722-c and to pay the fee for the doctor's trial testimony at public expense would be denied, since the affirmation of the attorney for respondent alleging respondent's indigency was not sufficient to support such application, since the affirmation failed to provide a

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sufficient basis upon which to make the requisite finding that the services sought were necessary to his defense, and since it offered no factual allegations in support of respondent's contention that the human leucocyte antigen test was erroneously performed or that it was not accurate. Cynthia H. v James H., 117 Misc. 2d 474, 458 N.Y.S.2d 490, 1983 N.Y. Misc. LEXIS 3172 (N.Y. Fam. Ct. 1983).

3. Prior court authorization

Clear legislative intent of County L § 722-c was to require prior authorization by court for counsel to obtain investigative, expert, or other services on behalf of defendant unable to pay for the services. People v Cotten, 73 Misc. 2d 688, 342 N.Y.S.2d 886, 1973 N.Y. Misc. LEXIS 2040 (N.Y. Dist. Ct. 1973).

Where prior authorization for reimbursement for expenses of preparing criminal defense is sought, statement specifying the time expended is not necessary and once prior authorization has been given, court reserves decision as to the amount of money to be paid pending completion of the investigative and other services. People v Jackson, 80 Misc. 2d 595, 363 N.Y.S.2d 288, 1975 N.Y. Misc. LEXIS 2221 (N.Y. County Ct. 1975).

4. —Nunc pro tunc authorization

Pursuant to County L § 722-c, legal aid society was entitled to reimbursement for services obtained on behalf of indigent defendant, despite society's failure to obtain prior court authorization for such services, where fact that defendant was at all times in custody and that society was under heavy case load resulted in "a finding that timely procurement of necessary services could not await prior authorization." People v Cotten, 73 Misc. 2d 688, 342 N.Y.S.2d 886, 1973 N.Y. Misc. LEXIS 2040 (N.Y. Dist. Ct. 1973).

5. Services not necessary

In trial for, inter alia, manslaughter, leaving scene of incident without reporting, reckless driving and speeding, court properly denied defendant's midtrial application for authorization to employ accident investigation expert under CLS County § 722-c where defendant failed to provide adequate proof of his indigency and failed to show that testimony of expert was necessary to his defense. People v Pinney, 136 A.D.2d 573, 523 N.Y.S.2d 567, 1988 N.Y. App. Div. LEXIS 303 (N.Y. App. Div. 2d Dep't), app. denied, 71 N.Y.2d 972, 529 N.Y.S.2d 83, 524 N.E.2d 437, 1988 N.Y. LEXIS 2040 (N.Y. 1988).

Court in probation revocation proceeding did not commit prejudicial error in denying defendant's application under CLS County § 722-c for additional funds for psychiatric and I.Q. testing where defense counsel merely averred in his affidavit that defendant's treating psychiatrist strongly recommended that testing would be needed to adequately prepare defense, and never asserted that defendant's insanity or lack of capacity to form requisite intent would be asserted as defense. People v Schneider, 188 A.D.2d 754, 591 N.Y.S.2d 550, 1992 N.Y. App. Div. LEXIS 13882 (N.Y. App. Div. 3d Dep't 1992), app. denied, 81 N.Y.2d 892, 597 N.Y.S.2d 954, 613 N.E.2d 986, 1993 N.Y. LEXIS 1551 (N.Y. 1993).

In prosecution for first and second degree robbery, indigent defendant's lack of expert witness to testify as to effects of smoking crack cocaine on person's ability to form intent to commit crime did not deprive him of fair trial or right to present defense where he admitted that he knew at time of each robbery that he was getting into taxi cab for express purpose of procuring money; thus, there was no genuine issue as to his mental state sufficient to require appointment of expert. People v Graves, 238 A.D.2d 754, 656 N.Y.S.2d 490, 1997 N.Y. App. Div. LEXIS 3950 (N.Y. App. Div. 3d Dep't), app. denied, 90 N.Y.2d 905, 663 N.Y.S.2d 517, 686 N.E.2d 229, 1997 N.Y. LEXIS 3385 (N.Y. 1997).

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In N.Y. Fam. Ct. Act art. 10 proceedings, because a father failed to demonstrate that the appointment of an expert was necessary, the father was not prejudiced by the denial of his request for the appointment of an expert under N.Y. County Law § 722-c to enable him to respond to petitioner agency's expert testimony. Matter of Michelle M. v Greg F., 52 A.D.3d 1284, 861 N.Y.S.2d 542, 2008 N.Y. App. Div. LEXIS 5038 (N.Y. App. Div. 4th Dep't 2008).

Trial court did not abuse its discretion in denying defendant's application for funds to hire a psychological expert to examine him and testify relative to his duress defense because, inter alia, defendant failed to demonstrate a "distinct necessity" for the assistance of an expert to aid the jury in resolving that issue, and was able to present his duress defense through his own trial testimony and to expound upon it through cross-examination of witnesses and closing arguments to the jury. People v Weaver, 167 A.D.3d 1238, 90 N.Y.S.3d 359, 2018 N.Y. App. Div. LEXIS 8674 (N.Y. App. Div. 3d Dep't 2018), app. denied, 2019 N.Y. LEXIS 1121 (N.Y. Mar. 26, 2019).

Trial court did not err in denying defendant's application for funds to retain an eyewitness identification expert because he failed to establish the expert was necessary to his defense, since eyewitness identification by the victim was corroborated by surveillance video and his counsel conceded that identity was not an issue People v Walker, 167 A.D.3d 1502, 89 N.Y.S.3d 809, 2018 N.Y. App. Div. LEXIS 8770 (N.Y. App. Div. 4th Dep't 2018), app. denied, 2019 N.Y. LEXIS 1097 (N.Y. Mar. 27, 2019).

Motion by defendant indicted for manslaughter in the first degree requesting an order appointing individual as special investigator to submit defendant, with his consent, to a polygraph test would be denied, in view of fact that defendant was an indigent and such testing would therefore result in expenditure of the taxpayers' money for no legal or useful purpose in view of fact that district attorney had stated in open court that even if polygraph test results were considered favorable to defendant, his office would not consider dismissing indictment. People v Black, 86 Misc. 2d 909, 382 N.Y.S.2d 944, 1976 N.Y. Misc. LEXIS 2541 (N.Y. Sup. Ct. 1976).

A college student charged with driving while intoxicated pursuant to Veh & Tr Law § 1192(2) would not be entitled to the services of a breathalyzer expert at county expense to testify as to alleged inadequacies of the breathalyzer instrument, since indigent defendants are only entitled, pursuant to County Law § 722-c, to those investigative expert or other services at public expense as are necessary, taking into account the nature and difficulty of the problems sought to be addressed, and the issues of the accuracy of the breathalyzer instrument and the use by police of "outdated" ampoules are common ones in driving while intoxicated cases, and can be thoroughly explored and brought to the jury's attention through defendant's attorney's cross examination of the People's witnesses. People v Stamp, 120 Misc. 2d 48, 465 N.Y.S.2d 122, 1983 N.Y. Misc. LEXIS 3660 (N.Y. Town Ct. 1983).

In the context of a prisoner's claim of ineffective assistance of counsel, cost constraints did not excuse counsel from investigating the prisoner's claim that he was outside the country at the time of a murder that occurred in New York. Counsel could have requested public assistance pursuant to N.Y. County Law § 722-c or counsel could have undertaken less costly investigative measures, such as interviewing witnesses who were prepared to corroborate the prisoner's alibi and subpoenaing records from airlines, travel agencies, and telephone companies. Garcia v Portuondo, 459 F. Supp. 2d 267, 2006 U.S. Dist. LEXIS 91894 (S.D.N.Y. 2006).

6. Claim for compensation, generally

22 NYCRR § 127.2(b) does not in any manner require consultation by trial judge with administrative judge and does not provide for appeal to administrative judge of trial judge's ruling. In re Director of the Assigned Counsel Plan, 159 Misc. 2d 142, 603 N.Y.S.2d 687, 1993 N.Y. Misc. LEXIS 426 (N.Y. Sup. Ct. 1993).

As general rule, it is reasonable that writing and editing of report will take one hour for each hour of examination and interviewing, and review of relevant records. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

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On application by consulting company for compensation pursuant to CLS County § 722-c, court would refuse to award expense for clerical work involving internal record-keeping and preparation of expense voucher. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

7. —Proper support of claim

Claim for compensation under County L § 722-c was denied with leave to renew on proper papers where claimant submitted no sworn statement to support claim. People v Cotten, 73 Misc. 2d 688, 342 N.Y.S.2d 886, 1973 N.Y. Misc. LEXIS 2040 (N.Y. Dist. Ct. 1973).

Where voucher of assigned attorney, who sought compensation in excess of \$500 under County Law, was prepared in a negligent manner, in that some items were improperly claimed, application for compensation would be denied with leave to renew upon filing of a detailed affidavit setting forth the dates and duration of each interview with defendant, each court appearance, and each conference or other activity for which compensation was claimed. O'Hare v Malcolm, 78 Misc. 2d 232, 356 N.Y.S.2d 525, 1974 N.Y. Misc. LEXIS 1370 (N.Y. Sup. Ct. 1974).

Application for reimbursement for expenses for investigation and preparation of defense to criminal charge based solely on attorney's affidavit would be denied with leave to renew upon additional affidavit of the defendant himself declaring his indigency. People v Jackson, 80 Misc. 2d 595, 363 N.Y.S.2d 288, 1975 N.Y. Misc. LEXIS 2221 (N.Y. County Ct. 1975).

Defendant, who retained her own counsel, paid for by fund raising efforts on her behalf, in place of previously assigned trial counsel following her conviction for murder, is not entitled to a trial transcript or other extra services available to indigent criminal defendants at county expense (County Law, art 18-B, § 722-c) in order to prepare her defense for postconviction relief since the purpose of the statute is to provide a defendant who is "financially unable to obtain counsel" with certain additional services and not to provide carte blanche to the county treasury or eliminate the pro bono publico aspect of a lawyer's role in representing indigent defendants; even assuming that a defendant with retained counsel may obtain other services at county expense, an attorney's affidavit in support of the application is insufficient since defendant is required to provide the court with a sworn statement showing the specifics of indigency, the allocation of attorney's fees and expenses and the need for county funds for extra services; funds raised for defendant and allocated for attorney's fees should be within the range of assigned counsel fees with the remaining moneys available for extra services contemplated by the statute. People v Powell, 101 Misc. 2d 315, 420 N.Y.S.2d 968, 1979 N.Y. Misc. LEXIS 2676 (N.Y. County Ct. 1979).

8. —Determination of reasonable compensation

In proceeding to reconsider award of reasonable compensation pursuant to CLS County § 722-c made to expert for services rendered in cases, it was irrelevant that expert consistently earned more than court-appointed medical experts and attorneys since reasonable compensation under statute must be determined on case-by-case basis. In re Director of the Assigned Counsel Plan, 159 Misc. 2d 142, 603 N.Y.S.2d 687, 1993 N.Y. Misc. LEXIS 426 (N.Y. Sup. Ct. 1993).

Authority of director of assigned counsel plan to make requests for reconsideration pursuant to 22 NYCRR § 127.2(b)-(c) does not permit reconsideration of amount charged by attorney or expert, but only permits reconsideration of judicial determination of compensation for attorney or expert; any disagreement by director about determination of "reasonable compensation" approved by judge does not lie between director and attorney or expert involved, who may request whatever compensation he or she desires. In re Director of the Assigned Counsel Plan, 159 Misc. 2d 142, 603 N.Y.S.2d 687, 1993 N.Y. Misc. LEXIS 426 (N.Y. Sup. Ct. 1993).

In proceeding to reconsider award of reasonable compensation pursuant to CLS County § 722-c made to expert for services rendered in cases, it was irrelevant that orders appointing expert did not specify or indicate services he

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was to supply. In re Director of the Assigned Counsel Plan, 159 Misc. 2d 142, 603 N.Y.S.2d 687, 1993 N.Y. Misc. LEXIS 426 (N.Y. Sup. Ct. 1993).

On application by consulting company for compensation pursuant to CLS County § 722-c, services identified in voucher as court advocacy, client interview, relative interview, attorney interview, and referral research were reasonable and necessary. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

On application by consulting company for compensation pursuant to CLS County § 722-c, court would approve travel time for court liaison to travel to and from court, to and from detention facility in which defendant was detained, and to and from defendant's mother's house, since such travel was reasonable and necessary. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

On application by consulting company for compensation pursuant to CLS County § 722-c, court would approve time spent waiting in courtroom for case to be called, since expenditure of such time was reasonable and necessary. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

Where provider of other than counsel services must travel from his or her office to provide specific services, travel becomes material and necessary part of service provided and should be compensated at same hourly rate as that which applies to direct services provided. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

Reasonable hourly rate of compensation for court liaison, who had BA degree in business administration but was not social worker, would not be based on reasonable hourly rate appropriate for social worker; reasonable rate would be set at \$30 per hour. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

In murder prosecution, reasonable compensation for court-appointed psychiatrist was \$100 per hour, rather than \$200 per hour rate requested by him, where he exhibited skills, knowledge and expertise far less than would be expected of board-certified psychiatrist, and his breach of his professional obligations delayed adjudication of case and necessitated appointment of additional experts at county expense. People v McLane, 166 Misc. 2d 698, 631 N.Y.S.2d 976, 1995 N.Y. Misc. LEXIS 388 (N.Y. Sup. Ct. 1995).

9. —Extraordinary circumstances

Indigent robbery defendant was not entitled to appointment of particular expert, at proposed cost of \$1,500, to testify as to effects of smoking crack cocaine on person's ability to form intent to commit crime, because CLS County § 722-c specifically limits expert's compensation at public expense to \$300 unless court determines that "extraordinary circumstances" warrant approval of greater fee, where County Court concluded that proposed fee was exorbitant and that extraordinary circumstances were not present, and defendant did not request further adjournment to locate another expert. People v Graves, 238 A.D.2d 754, 656 N.Y.S.2d 490, 1997 N.Y. App. Div. LEXIS 3950 (N.Y. App. Div. 3d Dep't), app. denied, 90 N.Y.2d 905, 663 N.Y.S.2d 517, 686 N.E.2d 229, 1997 N.Y. LEXIS 3385 (N.Y. 1997).

Fact that hours of work provided in case, multiplied by hourly rate which would constitute reasonable compensation, exceeds \$300 does not necessarily render case one where extraordinary circumstances exist. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

300
Case presented extraordinary circumstances which permitted authorization of payment of reasonable compensation in excess of \$300 where (1) case involved first felony offender charged with violent felony offense for which incarceration was mandatory unless defendant was allowed to plead guilty to lesser offense, (2) although defendant did not have history of mental illness, information about his family and personal background indicated that this data

might be relevant to eventual disposition of case, and (3) report was factor in determination that defendant be permitted to plead guilty to lesser offense and be sentenced to minimum allowable sentence of incarceration for that offense. People v Louis, 161 Misc. 2d 667, 614 N.Y.S.2d 888, 1994 N.Y. Misc. LEXIS 285 (N.Y. Sup. Ct. 1994).

10. Appointment of psychiatrist

Family Court properly denied juvenile's request for authorization to obtain services of psychologist pursuant to CLS County § 722-c in view of extensive evaluation and psychological examination of juvenile by Family Court Mental Health Services and Probation Department. In re Garfield M., 128 A.D.2d 876, 513 N.Y.S.2d 798, 1987 N.Y. App. Div. LEXIS 44553 (N.Y. App. Div. 2d Dep't 1987).

Where psychiatrist had found indigent accused able to stand trial on charges of coercion and sexual abuse, but accused displayed erratic behavior in court and insisted on representing himself, court would appoint psychiatrist to examine accused to determine whether he had capacity to represent himself and hearing on such issue would be required. People v Jones, 74 Misc. 2d 767, 346 N.Y.S.2d 92, 1973 N.Y. Misc. LEXIS 1753 (N.Y. City Crim. Ct. 1973).

Where defendant's own psychiatrist was appointed by court because of defendant's indigency, and psychiatric examination to be made was not otherwise actuated by court but by defense counsel's own judgment, such examination was private and therefore secret, and prosecution's presence would be violative of defendant's rights and court would not order same on motion by the prosecution. People v Thomas, 77 Misc. 2d 1095, 355 N.Y.S.2d 909, 1974 N.Y. Misc. LEXIS 1309 (N.Y. Sup. Ct. 1974).

There is no constitutional right to the appointment of a psychiatrist at public expense to assist parent in preparation of defense in neglect proceeding. In re A, 81 Misc. 2d 354, 366 N.Y.S.2d 269, 1975 N.Y. Misc. LEXIS 2387 (N.Y. Fam. Ct. 1975).

Psychiatrist would not be appointed in neglect proceeding to examine mother at city expense as an aid to mother at hearing inasmuch as testimony would be relevant only to charge that mother might be a mentally disturbed person and it was doubtful that allegation of mental disturbance, even if unequivocally pleaded, was a proper element of neglect. In re A, 81 Misc. 2d 354, 366 N.Y.S.2d 269, 1975 N.Y. Misc. LEXIS 2387 (N.Y. Fam. Ct. 1975).

Incarcerated father seeking visitation with daughters at correctional facility is not entitled to appointment of psychiatrist pursuant to CLS County § 722-c to examine children at public expense, with release of report to court subject to father's consent, to counter letter from child psychiatrist which concludes that renewed visitation with father would not be in children's best interest, as court appointed psychiatric examination of children pursuant to CLS FCA § 251 will adequately protect father's rights, and further, there is no constitutional right to appointment of psychiatrist at public expense to assist indigent parent in preparation of visitation case. D. v K., 131 Misc. 2d 775, 501 N.Y.S.2d 557, 1986 N.Y. Misc. LEXIS 2574 (N.Y. Fam. Ct. 1986).

Criminal defendant's ex parte application under CLS County § 722-c for expert services would be denied where he was charged with rape and sodomy as second violent felony offender, and he sought order directing county to pay for all costs in connection with proposed testing—by psychiatrist at hospital in Canada—of defendant's hormone levels in order that opinion could be rendered as to how hormone levels dictated his criminal behavior; defendant failed to show that such expert services were necessary within meaning of statute, and costs would be "phenomenal" given logistics of transport and security risks. People v Thomas, 139 Misc. 2d 158, 527 N.Y.S.2d 357, 1988 N.Y. Misc. LEXIS 179 (N.Y. County Ct. 1988).

Trial court's denial of defendant's request for funds for a psychiatric expert was proper where no prejudice was shown by defendant and further, defendant's treating psychiatrist had testified as to her bipolar condition at trial; accordingly, reversal of her multiple convictions in the interests of justice was not required. People v Brown, 307 A.D.2d 973, 762 N.Y.S.2d 923, 2003 N.Y. App. Div. LEXIS 8680 (N.Y. App. Div. 2d Dep't), app. denied, 100 N.Y.2d 641, 769 N.Y.S.2d 206, 801 N.E.2d 427, 2003 N.Y. LEXIS 4238 (N.Y. 2003).

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Defendant was not entitled to a sleep evaluation by a psychiatrist under N.Y. County Law § 722-c in support of his sleep walking defense because given the testimony of another of defendant's psychiatric experts, he was fully able to challenge the State's assertion that he was entirely conscious and acting intentionally when he shot his wife. People v Brand, 13 A.D.3d 820, 787 N.Y.S.2d 169, 2004 N.Y. App. Div. LEXIS 15270 (N.Y. App. Div. 3d Dep't 2004), app. denied, 4 N.Y.3d 851, 797 N.Y.S.2d 425, 830 N.E.2d 324, 2005 N.Y. LEXIS 1279 (N.Y. 2005).

In order to prevail on a motion for expert services, a defendant is required to show that the services requested are necessary to the defense and, when the compensation for the services exceeds \$300, that there are extraordinary circumstances. People v Brand, 13 A.D.3d 820, 787 N.Y.S.2d 169, 2004 N.Y. App. Div. LEXIS 15270 (N.Y. App. Div. 3d Dep't 2004), app. denied, 4 N.Y.3d 851, 797 N.Y.S.2d 425, 830 N.E.2d 324, 2005 N.Y. LEXIS 1279 (N.Y. 2005).

Mother's medical records and testimony by the psychiatrist who treated her for eight years obviated the necessity for additional expert testimony in a child neglect proceeding. Matter of Noah Jeremiah J. v Kimberly J., 81 A.D.3d 37, 914 N.Y.S.2d 105, 2010 N.Y. App. Div. LEXIS 9479 (N.Y. App. Div. 1st Dep't 2010).

11. Appointment of expert

Court did not err in denying defendant's request to retain expert in field of eyewitness identification at public expense on ground that expert's testimony on defendant's behalf would be inadmissible. People v Brown, 136 A.D.2d 1, 525 N.Y.S.2d 618, 1988 N.Y. App. Div. LEXIS 2133 (N.Y. App. Div. 2d Dep't), app. denied, 72 N.Y.2d 857, 532 N.Y.S.2d 507, 528 N.E.2d 897, 1988 N.Y. LEXIS 3654 (N.Y. 1988), cert. denied, 488 U.S. 897, 109 S. Ct. 240, 102 L. Ed. 2d 229, 1988 U.S. LEXIS 4322 (U.S. 1988).

Under CLS County § 722-c, which permits court to authorize expenditure of funds for expert services on showing of necessity, such services are necessary where defendant shows that his or her sanity at time of offense is likely to be important factor at trial. People v Carpenter, 240 A.D.2d 863, 658 N.Y.S.2d 542, 1997 N.Y. App. Div. LEXIS 6706 (N.Y. App. Div. 3d Dep't), app. denied, 90 N.Y.2d 902, 663 N.Y.S.2d 514, 686 N.E.2d 226, 1997 N.Y. LEXIS 3313 (N.Y. 1997).

Murder defendant did not show necessity for expenditure of public funds for expert services under CLS County § 722-c where he wanted to present psychiatric evidence that reasonable or rational person would not kill another for \$2,500, but there was no evidence that he was incompetent to stand trial, that he required psychiatric medication, or that he had history of psychiatric problems. People v Carpenter, 240 A.D.2d 863, 658 N.Y.S.2d 542, 1997 N.Y. App. Div. LEXIS 6706 (N.Y. App. Div. 3d Dep't), app. denied, 90 N.Y.2d 902, 663 N.Y.S.2d 514, 686 N.E.2d 226, 1997 N.Y. LEXIS 3313 (N.Y. 1997).

In trial for third degree sale of drugs, defendant was not entitled to appointment of purported expert to testify that it was unusual for hand-to-hand dealer to have nothing but buy money on him when arrested, because proposed testimony was irrelevant inasmuch as additional money had been recovered from defendant and his accomplice. People v Oquendo, 250 A.D.2d 419, 676 N.Y.S.2d 528, 1998 N.Y. App. Div. LEXIS 5418 (N.Y. App. Div. 1st Dep't), app. denied, 92 N.Y.2d 902, 680 N.Y.S.2d 66, 702 N.E.2d 851, 1998 N.Y. LEXIS 3515 (N.Y. 1998).

Defendant's failure to establish any connection between alleged brain injury sustained by him 4 years earlier and any defense to one or more charges contained in indictment provided sufficient basis to deny his motion for authorization to retain expert to testify as to effect of brain injury. People v Paro, 283 A.D.2d 669, 724 N.Y.S.2d 531, 2001 N.Y. App. Div. LEXIS 4423 (N.Y. App. Div. 3d Dep't), app. denied, 96 N.Y.2d 922, 732 N.Y.S.2d 640, 758 N.E.2d 666, 2001 N.Y. LEXIS 3983 (N.Y. 2001).

Court's denial of defense request for \$6,000 to retain specific expert to examine audiotapes of drug buys made by confidential informant was not abuse of discretion, and did not impair defendant's right to present adequate defense, where (1) application was oral and failed to address details concerning necessity for expert, time to be

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expended by expert, precise services to be rendered by expert and extraordinary circumstances warranting expenditure in excess of \$300, and (2) after court denied initial application, defendant did not seek adjournment to locate expert who could examine records at more reasonable cost. People v Dove, 287 A.D.2d 806, 731 N.Y.S.2d 769, 2001 N.Y. App. Div. LEXIS 9762 (N.Y. App. Div. 3d Dep't 2001).

Where the defendant failed to establish that experts were necessary for him to succeed on his N.Y. Crim. Proc. Law § 440.10 motion, the court did not abuse discretion in denying his application for fees. People v Dearstynne, 305 A.D.2d 850, 761 N.Y.S.2d 118, 2003 N.Y. App. Div. LEXIS 5784 (N.Y. App. Div. 3d Dep't), app. denied, 100 N.Y.2d 593, 766 N.Y.S.2d 169, 798 N.E.2d 353, 2003 N.Y. LEXIS 3494 (N.Y. 2003).

Where a trial court properly authorized the funds for defendant to hire an expert pursuant to N.Y. County Law § 722-c, there was no requirement in the statute that the court itself appoint an expert on defendant's behalf. People v Welch, 307 A.D.2d 776, 763 N.Y.S.2d 701, 2003 N.Y. App. Div. LEXIS 7945 (N.Y. App. Div. 4th Dep't), app. denied, 100 N.Y.2d 625, 767 N.Y.S.2d 409, 799 N.E.2d 632, 2003 N.Y. LEXIS 3894 (N.Y. 2003).

Trial court did not abuse or improvidently exercise its discretion in denying defendant's motion seeking funds to retain a jury consultant; defendant failed to establish that the retention of such an expert was necessary under the circumstances of the case. People v Pike, 63 A.D.3d 1692, 880 N.Y.S.2d 832, 2009 N.Y. App. Div. LEXIS 4739 (N.Y. App. Div. 4th Dep't), app. denied, 13 N.Y.3d 838, 890 N.Y.S.2d 454, 918 N.E.2d 969, 2009 N.Y. LEXIS 4193 (N.Y. 2009).

Trial court's denial of a mother's request for the appointment of a social worker was proper because the mother did not make the requisite showing that the appointment of a social worker expert was necessary. Matter of Lane v Lane, 68 A.D.3d 995, 892 N.Y.S.2d 130, 2009 N.Y. App. Div. LEXIS 9265 (N.Y. App. Div. 2d Dep't 2009).

Boyfriend of a child's physical and legal custodian's application for funds to hire a medical expert in an abuse and neglect proceeding regarding allegations of child sexual abuse of a child by the boyfriend was properly denied as the application established neither necessity nor extraordinary circumstances. Matter of Tierra D. (Philip C.), 124 A.D.3d 973, 1 N.Y.S.3d 492, 2015 N.Y. App. Div. LEXIS 274 (N.Y. App. Div. 3d Dep't 2015).

In a conviction for aggravated harassment of an employee by an inmate, the trial court did not abuse its discretion in denying defendant's request to investigate and to test the water at the correctional facility and an audiologist to examine the recording of the incident because defendant did not make the requisite showing of necessity. People v Micolio, 2019 N.Y. App. Div. LEXIS 3266 (N.Y. App. Div. 4th Dep't 2019).

In murder prosecution in which psychiatrist and neurologist, who were both appointed by court to assess defendant's mental capacity, had conflicting opinions as to existence of neuropsychiatric phenomenon known as "emotional seizures," and psychiatrist lacked specific expertise in that his opinion was based on what other experts told him, due process required that court grant defendant's request to appoint second board-certified neurologist to assist in his defense. People v McLane, 166 Misc. 2d 698, 631 N.Y.S.2d 976, 1995 N.Y. Misc. LEXIS 388 (N.Y. Sup. Ct. 1995).

Supreme Court, which consolidated a child abuse action in the Family Court with a postjudgment divorce action, had the authority, pursuant to N.Y. Jud. Ct. Acts Law § 35(8), to authorize the payment of a mental health professional to conduct forensic examinations. George A. v Ivett A., 826 N.Y.S.2d 877, 14 Misc. 3d 622, 2006 N.Y. Misc. LEXIS 3765 (N.Y. Sup. Ct. 2006).

Trial court did not err in not appointing a handwriting analysis expert in a juvenile delinquency case under circumstances in which the mother of respondent, a juvenile, orally requested at the outset of the fact-finding hearing that a handwriting expert be appointed, but that oral application did not make the required showing that the expert was in fact necessary; the trial court did not pass on this request but, rather, suggested to respondent's mother that she discuss the matter with her daughter's attorney. Respondent's attorney never made such a motion, nor renewed or adopted the mother's request and counsel did not object to the trial court's failure to appoint such

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an expert. Matter of Brittenie K., 50 A.D.3d 1203, 854 N.Y.S.2d 799, 2008 N.Y. App. Div. LEXIS 2863 (N.Y. App. Div. 3d Dep't 2008).

State trial judge acted within discretion afforded under § 722-c in denying defendant's request for hair identification expert where prosecution's expert testimony was brief, communicated in non-technical language which was readily understandable by defense and the jury, and moreover, under cross-examination, expert stated that no hair comparison could prove identity positively. Johnson v Harris, 682 F.2d 49, 1982 U.S. App. LEXIS 18125 (2d Cir. N.Y.), cert. denied, 459 U.S. 1041, 103 S. Ct. 457, 74 L. Ed. 2d 609, 1982 U.S. LEXIS 4529 (U.S. 1982).

Opinion Notes

Agency Opinions

1. In general

A county is obligated to furnish sufficient funds for office of public defender to provide adequate defense for indigent defendants, and the determination that the defendant is unable to afford counsel is made by the court which has the duty to assign counsel. The finality and duration of such determination is a judicial function. 1966 NY Ops Atty Gen Apr 21 (Informal), 1966 N.Y. AG LEXIS 66.

Research References & Practice Aids

Cross References:

Assignment of counsel for indigent persons, CLS SCPA § 407.

Appointment of law guardian, CLS Family Ct Act § 249.

Assignment of counsel for indigent persons, CLS Family Ct Act § 262.

Jurisprudences:

26 NY Jur 2d Counties, Towns, and Municipal Corporations § 639 .

33 NY Jur 2d Criminal Law § 2035 .

Matthew Bender's New York Civil Practice:

1 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 13.05; 2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings §§ 25.10, 29.05, 31.03; 3 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings §§ 50.04, 50.05; 4 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 70.05.

Annotations:

Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 ALR4th 874.

Right of indigent defendant in state criminal case to assistance of expert in social attitudes. 74 ALR4th 330.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 ALR4th 388.

Matthew Bender's New York Practice Guides:

2 New York Practice Guide: Domestic Relations §§ 34.09, 34.21; 3 New York Practice Guide: Domestic Relations §§ 37.11, 37.17, 37.18, 37.20, 37.25.

Hierarchy Notes:

NY CLS County

NY CLS County, Art. 18-B

Forms

Forms

Form 1

Motion for Appointment of Expert Witnesses—Ballistics Expert and Pathologist

[Caption]

PLEASE TAKE NOTICE that upon the annexed affirmation of _____, Esq. duly affirmed _____, 20_____ and upon the papers and proceedings previously filed, the undersigned, *ex parte*, will move this Court, Part _____, to be held at _____, New York, on _____, 20_____ at 9:30 in the forenoon, or as soon thereafter as counsel may be heard, for an order:

1. Pursuant to County Law § 722-c, authorizing counsel to obtain for the defendant the following services:
 - a. a ballistics expert;
 - b. a pathologist.
2. Granting counsel for the defendant a reasonable amount of time to make such additional motions as are predicated upon the District Attorney's response to and necessitated by the Court's decision on the instant motions;
3. Granting such further and other relief as the Court deems just and proper.

DATED: _____, NEW YORK

_____, 20_____

Yours, etc.

Form 2

17



robert malek <abc75abc@gmail.com>

Signed sheet of rules and regulations, any affidavits

6 messages

robert malek <abc75abc@gmail.com>

Thu, Jul 23, 2020 at 4:07 PM

To: rspitzer@cfs-nyc.com, Kevin Gorrasi <kgorrasi@cfs-nyc.com>, Bettina Thomsen <bthomsen@cfs-nyc.com>, robert malek <abc75abc@gmail.com>

dear mr gorrasi,
mrs. tompsen,
mr spitzer,

can you please forward me a copy of the rules and regulations sheets i signed ?

Also, if there were any affidavits i need a copy. i dont know, just checking to be sure i have everything.

thank you,
regards,
robert malek, pro se

robert malek <abc75abc@gmail.com>

Wed, Jul 29, 2020 at 9:09 AM

To: "rspitzer@cfs-nyc.com" <rspitzer@cfs-nyc.com>, Kevin Gorrasi <kgorrasi@cfs-nyc.com>, Bettina Thomsen <bthomsen@cfs-nyc.com>, robert malek <abc75abc@gmail.com>, Robert Maes <rmaes@bds.org>, "Johnson, Travis" <TMJohnson@legal-aid.org>, Henderson Brathwaite <hbrathwa@nycourts.gov>, "Almonte, Rosmil (ACS)" <Rosmil.Almonte@acs.nyc.gov>, "nicola.gibson@acs.nyc.gov" <nicola.gibson@acs.nyc.gov>
Cc: "Velez, George" <VELEZG2@nychhc.org>

Now that we have established there weren't any affidavits from CFS from my previous emails asking all of you about this with no one having any knowledge of such and Cfs does not wish to respond to turn over rules and regulations sheets i signed,

Should there have been any affidavits from CFS?

Furthermore,

Mr Spitzer have you ever sent any affidavits to the court regarding anyone whom visited with their child at Cfs ?

Mrs thomsen same question.

Mr gorrasi same question.

Mr brathwaite, I know that you had stated that we don't have to cc the court with all correspondence. However, the court is involved with this matter.

Mr Velez, you evaluate parents in part upon Cfs reports. Have you ever seen affidavits from Cfs upon parents?

So Simple questions to all...

Should there have been upon me?

Was there ever upon anyone?

sincerely,
Robert Malek, pro se
Founder acs
complaints.com

[Quoted text hidden]

1/3

Bettina Thomsen <bthomsen@cfs-nyc.com>

Wed, Jul 29, 2020 at 9:46 AM

9/9/2020

Gmail - signed sheet of rules and regulations, any affidavits

To: robert malek <abc75abc@gmail.com>, Rick Spitzer <rspitzer@cfs-nyc.com>, Kevin Gorrasi <kgorrasi@cfs-nyc.com>, Robert Maes <rmaes@bds.org>, "Johnson, Travis" <TMJohnson@legal-aid.org>, "Almonte, Rosmil (ACS)" <Rosmil.Almonte@acs.nyc.gov>, "nicola.gibson@acs.nyc.gov" <nicola.gibson@acs.nyc.gov>
Cc: "Velez, George" <VELEZG2@nychhc.org>

19

Mr. Malek,

I have removed the Court from this email.

I spoke with Kevin yesterday, and am told that you were given a copy of CFS' visitation policies on the same day as your intake interview. Have you misplaced your copy?

Thank you,
Bettina

Bettina Thomsen, LCSW

Assistant Director

Comprehensive Family Services

t: 212.267.2670

c: 347.422.6115

f: 212.267.2665

Comprehensive Family Services

www.cfs-nyc.com (<http://www.cfs-nyc.com>)

Comprehensive Therapeutic Services

www.cts-nyc.com (<http://www.cts-nyc.com>)

CONFIDENTIALITY NOTICE: This email communication and any attachments may contain confidential and legally privileged information. If you are not the intended recipient or an agent designated by the intended recipient you are hereby notified that any use, disseminating, forwarding, printing or copying of this email is strictly prohibited. Please advise the sender immediately by reply email and delete this message and any attachments without reviewing or retaining any copy. Thank you.

From: robert malek <abc75abc@gmail.com (<mailto:abc75abc@gmail.com>)>

Sent: Wednesday, July 29, 2020 9:09 AM

To: Rick Spitzer <rspitzer@cfs-nyc.com (<mailto:rspitzer@cfs-nyc.com>)>; Kevin Gorrasi <kgorrasi@cfs-nyc.com (<mailto:kgorrasi@cfs-nyc.com>)>; Bettina Thomsen <bthomsen@cfs-nyc.com (<mailto:bthomsen@cfs-nyc.com>)>; robert malek <abc75abc@gmail.com (<mailto:abc75abc@gmail.com>)>; Robert Maes <rmaes@bds.org (<mailto:rmaes@bds.org>)>; Johnson, Travis <TMJohnson@legal-aid.org (<mailto:TMJohnson@legal-aid.org>)>; Henderson Brathwaite <hbrathwa@nycourts.gov (<mailto:hbrathwa@nycourts.gov>)>; Almonte, Rosmil (ACS) <Rosmil.Almonte@acs.nyc.gov (<mailto:Rosmil.Almonte@acs.nyc.gov>)>; nicola.gibson@acs.nyc.gov (<mailto:nicola.gibson@acs.nyc.gov>)>

Cc: Velez, George <VELEZG2@nychhc.org (<mailto:VELEZG2@nychhc.org>)>

Subject: Re: signed sheet of rules and regulations, any affidavits

[Quoted text hidden]

20

abc75abc@gmail.com <abc75abc@gmail.com>

Wed, Jul 29, 2020 at 10:13 AM

To: Bettina Thomsen <bthomsen@cfs-nyc.com>, Rick Spitzer <rspitzer@cfs-nyc.com>, Kevin Gorrasi <kgorrasi@cfs-nyc.com>, Robert Maes <rmaes@bds.org>, "Johnson, Travis" <TMJohnson@legal-aid.org>, "Almonte, Rosmil (ACS)" <Rosmil.Almonte@acs.nyc.gov>, nicola.gibson@acs.nyc.gov

Cc: "Velez, George" <VELEZG2@nychhc.org>

well, i had lawyers back then. i assume i provided it to them. i do not have it. i also believe it was a signed document.

robert malek

Sent from my Verizon LG Smartphone

----- Original message-----

From: Bettina Thomsen

Date: Wed, Jul 29, 2020 9:46 AM

To: robert malek;Rick Spitzer;Kevin Gorrasi;Robert Maes;Johnson, Travis;Almonte, Rosmil (ACS);nicola.gibson@acs.nyc.gov (mailto:nicola.gibson@acs.nyc.gov);

Cc: Velez, George;

Subject:Re: signed sheet of rules and regulations, any affidavits

Mr. Malek,

I have removed the Court from this email.

I spoke with Kevin yesterday, and am told that you were given a copy of CFS' visitation policies on the same day as your intake interview. Have you misplaced your copy?

Thank you,
Bettina

Bettina Thomsen, LCSW

Assistant Director

Comprehensive Family Services

t: 212.267.2670 (tel:212.267.2670)

c: 347.422.6115 (tel:347.422.6115)

f: 212.267.2665 (tel:212.267.2665)

Comprehensive Family Services

(<http://www.cfs-nyc.com>)www.cfs-nyc.com (<http://www.cfs-nyc.com>)

Comprehensive Therapeutic Services

(<http://www.cts-nyc.com>)www.cts-nyc.com (<http://www.cts-nyc.com>)

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21

From: robert malek > (mailto:%3Cabc75abc@gmail.com)

Sent: Wednesday, July 29, 2020 9:09 AM

To: Rick Spitzer >; Kevin Gorrasi (mailto:%3Crspitzer@cfs-nyc.com)>; Bettina Thomsen (mailto:%3Ckgorrasi@cfs-nyc.com)>; robert malek (mailto:%3Cbthomsen@cfs-nyc.com)>; Robert Maes (mailto:%3Cabc75abc@gmail.com)>; Johnson, Travis (mailto:%3Crmaes@bds.org)>; Henderson Brathwaite (mailto:%3CTMJohnson@legal-aid.org)>; Almonte, Rosmil (ACS) (mailto:%3Chbrathwa@nycourts.gov)>; (mailto:%3CRosmil.Almonte@acs.nyc.gov) nicola.gibson@acs.nyc.gov (mailto:+nicola.gibson@acs.nyc.gov) > (mailto:%3Cnicola.gibson@acs.nyc.gov)

Cc: Velez, George > (mailto:%3CVELEZG2@nychhc.org)

[Quoted text hidden]

[Quoted text hidden]

Bettina Thomsen <bthomsen@cfs-nyc.com>

Wed, Jul 29, 2020 at 3:55 PM

To: "abc75abc@gmail.com" <abc75abc@gmail.com>, Rick Spitzer <rspitzer@cfs-nyc.com>, Kevin Gorrasi <kgorrasi@cfs-nyc.com>

22

As you did not retain your own copy, perhaps your prior attorney can provide your copy to you?

If not, I will send you a copy next time I am in the office.

Bettina

Bettina Thomsen, LCSW

Assistant Director
Comprehensive Family Services

t: 212.267.2670

c: 347.422.6115

f: 212.267.2665

Comprehensive Family Services
www.cfs-nyc.com (<http://www.cfs-nyc.com>)

Comprehensive Therapeutic Services
www.cts-nyc.com (<http://www.cts-nyc.com>)

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From: abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>

Sent: Wednesday, July 29, 2020 10:13 AM

To: Bettina Thomsen <bthomsen@cfs-nyc.com (mailto:bthomsen@cfs-nyc.com)>; Rick Spitzer <rspitzer@cfs-nyc.com (mailto:rspitzer@cfs-nyc.com)>; Kevin Gorrasi <kgorrasi@cfs-nyc.com (mailto:kgorrasi@cfs-nyc.com)>; Robert Maes <rmaes@bds.org (mailto:rmaes@bds.org)>; Johnson, Travis <TMJohnson@legal-aid.org (mailto:TMJohnson@legal-aid.org)>; Almonte, Rosmil (ACS) <Rosmil.Almonte@acs.nyc.gov (mailto:Rosmil.Almonte@acs.nyc.gov)>; nicola.gibson@acs.nyc.gov (mailto:nicola.gibson@acs.nyc.gov) <nicola.gibson@acs.nyc.gov (mailto:nicola.gibson@acs.nyc.gov)>

Cc: Velez, George <VELEZG2@nychhc.org (mailto:VELEZG2@nychhc.org)>

[Quoted text hidden]

[Quoted text hidden]

abc75abc@gmail.com <abc75abc@gmail.com>
To: Bettina Thomsen <bthomsen@cfs-nyc.com>

Wed, Jul 29, 2020 at 4:14 PM

Hello.

thank you bettina. it was more than a year ago and spinnell gave me a big box of papers. it wasnt in there. it went from zimmerman to spinnell who knows who had it when.

sincerely,
robert malek

23

Sent from my Verizon LG Smartphone

----- Original message-----

From: Bettina Thomsen

Date: Wed, Jul 29, 2020 3:55 PM

To: abc75abc@gmail.com (mailto:abc75abc@gmail.com);Rick Spitzer;Kevin Gorrasi;

Cc:

Subject:Re: signed sheet of rules and regulations, any affidavits

As you did not retain your own copy, perhaps your prior attorney can provide your copy to you?

If not, I will send you a copy next time I am in the office.

Bettina

Bettina Thomsen, LCSW

Assistant Director

Comprehensive Family Services

t: 212.267.2670 (tel:212.267.2670)

c: 347.422.6115 (tel:347.422.6115)

f: 212.267.2665 (tel:212.267.2665)

Comprehensive Family Services

(<http://www.cfs-nyc.com>)www.cfs-nyc.com (<http://www.cfs-nyc.com>)

Comprehensive Therapeutic Services

(<http://www.cts-nyc.com>)www.cts-nyc.com (<http://www.cts-nyc.com>)

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From: abc75abc@gmail.com (mailto:+abc75abc@gmail.com) > (mailto:%3Cabc75abc@gmail.com)

Sent: Wednesday, July 29, 2020 10:13 AM

To: Bettina Thomsen >; Rick Spitzer (mailto:%3Cbthomsen@cfs-nyc.com)>; Kevin Gorrasi (mailto:%3Crspitzer@cfs-nyc.com)>; Robert Maes (mailto:%3Ckgorrasi@cfs-nyc.com)>; Johnson, Travis (mailto:%3Crmaes@bds.org)>; Almonte, Rosmil (ACS) (mailto:%3CTMJohnson@legal-aid.org)>; (mailto:%3CRosmil.Almonte@acs.nyc.gov) nicola.gibson@acs.nyc.gov (mailto:+nicola.gibson@acs.nyc.gov) > (mailto:%3Cnicola.gibson@acs.nyc.gov)

[Quoted text hidden]

[Quoted text hidden]

24



robert malek <abc75abc@gmail.com>

you have any affidavits from cfs ?

messages

abc75abc@gmail.com <abc75abc@gmail.com>

Tue, Jul 21, 2020 at 8:00 AM

To: "hbrathwa@nycourts.gov" <hbrathwa@nycourts.gov>

Cc: Robert Maes <rmaes@bds.org>, "Rosmil Almonte, (ACS)" <Rosmil.Almonte@acs.nyc.gov>, "abc75abc@gmail.com" <abc75abc@gmail.com>, Travis Johnson <TMJohnson@legal-aid.org>

mr brathwaite,

i asked you this two times before. i was just checking. simple question. wanted to make sure i had everything.

thanks,
robert malek*Sent from my Verizon LG Smartphone*

Henderson Brathwaite <hbrathwa@nycourts.gov>

Tue, Jul 21, 2020 at 2:47 PM

To: "abc75abc@gmail.com" <abc75abc@gmail.com>

Cc: Robert Maes <rmaes@bds.org>, "Rosmil Almonte, (ACS)" <Rosmil.Almonte@acs.nyc.gov>, Travis Johnson <TMJohnson@legal-aid.org>

What are you looking for Mr. Malek? The Court is selecting August 29th @ 12pm in VC-Kings 3 (please look out of the calendar invite in a few minutes). Thank you and have a great day!

From: abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>

Sent: Tuesday, July 21, 2020 8:00 AM

To: Henderson Brathwaite <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)>

Cc: Robert Maes <rmaes@bds.org (mailto:rmaes@bds.org)>; Rosmil Almonte, (ACS) <Rosmil.Almonte@acs.nyc.gov (mailto:Rosmil.Almonte@acs.nyc.gov)>; abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>; Travis Johnson <TMJohnson@legal-aid.org (mailto:TMJohnson@legal-aid.org)>

Subject: do you have any affidavits from cfs ?

mr brathwaite,

i asked you this two times before. i was just checking. simple question. wanted to make sure i had everything.

thanks,
robert malek*Sent from my Verizon LG Smartphone*

Please be CAREFUL when clicking links or opening attachments from external senders.

Henderson Brathwaite <hbrathwa@nycourts.gov>

Tue, Jul 21, 2020 at 2:48 PM

To: "abc75abc@gmail.com" <abc75abc@gmail.com>

Cc: Robert Maes <rmaes@bds.org>, "Rosmil Almonte, (ACS)" <Rosmil.Almonte@acs.nyc.gov>, Travis Johnson <TMJohnson@legal-aid.org>

26

9/9/2020

Gmail - do you have any affidavits from cfs ?

Not August 29th, July 29th. My apologies

From: Henderson Brathwaite <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)>
Sent: Tuesday, July 21, 2020 2:47 PM
To: abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>
Cc: Robert Maes <rmaes@bds.org (mailto:rmaes@bds.org)>; Rosmil Almonte, (ACS) <Rosmil.Almonte@acs.nyc.gov (mailto:Rosmil.Almonte@acs.nyc.gov)>; Travis Johnson <TMJohnson@legal-aid.org (mailto:TMJohnson@legal-aid.org)>
Subject: Re: do you have any affidavits from cfs ?

What are you looking for Mr. Malek? The Court is selecting August 29th @ 12pm in VC-Kings 3 (please look out of the calendar invite in a few minutes). Thank you and have a great day!

From: abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>
Sent: Tuesday, July 21, 2020 8:00 AM
To: Henderson Brathwaite <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)>
Cc: Robert Maes <rmaes@bds.org (mailto:rmaes@bds.org)>; Rosmil Almonte, (ACS) <Rosmil.Almonte@acs.nyc.gov (mailto:Rosmil.Almonte@acs.nyc.gov)>; abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>; Travis Johnson <TMJohnson@legal-aid.org (mailto:TMJohnson@legal-aid.org)>
Subject: do you have any affidavits from cfs ?

mr brathwaite,

i asked you this two times before. i was just checking. simple question. wanted to make sure i had everything.

thanks,
robert malek

Sent from my Verizon LG Smartphone

Please be CAREFUL when clicking links or opening attachments from external senders.

robert malek <abc75abc@gmail.com>
To: Henderson Brathwaite <hbrathwa@nycourts.gov>

Tue, Jul 21, 2020 at 3:02 PM

27.

regard,
robert m

On Tue, Jul 21, 2020 at 2:47 PM Henderson Brathwaite <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)> wrote:

What are you looking for Mr. Malek? The Court is selecting August 29th @ 12pm in VC-Kings 3 (please look out of the calendar invite in a few minutes). Thank you and have a great day!

From: abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>

Sent: Tuesday, July 21, 2020 8:00 AM

To: Henderson Brathwaite <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)>

Cc: Robert Maes <rmaes@bds.org (mailto:rmaes@bds.org)>; Rosmil Almonte, (ACS) <Rosmil.Almonte@acs.nyc.gov (mailto:Rosmil.Almonte@acs.nyc.gov)>; abc75abc@gmail.com (mailto:abc75abc@gmail.com) <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>; Travis Johnson <TMJohnson@legal-aid.org (mailto:TMJohnson@legal-aid.org)>

Subject: do you have any affidavits from cfs ?

mr brathwaite,

i asked you this two times before. i was just checking. simple question. wanted to make sure i had everything.

thanks,
robert malek

Sent from my Verizon LG Smartphone

Please be CAREFUL when clicking links or opening attachments from external senders.

robert malek <abc75abc@gmail.com>

To: Henderson Brathwaite <hbrathwa@nycourts.gov>

Tue, Jul 21, 2020 at 3:02 PM



robert malek <abc75abc@gmail.com>

Just making sure I have everything

2 messages

robert malek <abc75abc@gmail.com>
To: hbrathwa@nycourts.gov

Wed, Jul 15, 2020 at 11:53 PM

Mr brathwaite,

Does the court have any affidavits from CFS ?
Just checking. I have no idea.
If so, I obviously need a copy under Discovery disclosure like everyone else.

Thank You,
Robert Malek

robert malek <abc75abc@gmail.com>
To: hbrathwa@nycourts.gov

Fri, Jul 17, 2020 at 6:39 AM

Mr brathwaite,

----- Forwarded message -----

From: **robert malek** <abc75abc@gmail.com (mailto:abc75abc@gmail.com)>
Date: Wed, Jul 15, 2020, 11:53 PM
Subject: Just making sure I have everything
To: <hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov)>

Mr brathwaite,

Does the court have any affidavits from CFS ?
Just checking. I have no idea.
If so, I obviously need a copy under Discovery disclosure like everyone else.

Thank You,
Robert Malek

29



robert malek <abc75abc@gmail.com>

any cfs affidavits

2 messages

robert malek <abc75abc@gmail.com>

Tue, Jul 21, 2020 at 5:28 PM

To: Henderson Brathwaite <hbrathwa@nycourts.gov>, Robert Maes <rmaes@bds.org>, "Johnson, Travis" <TMJohnson@legal-aid.org>, "nicola.gibson@acs.nyc.gov" <nicola.gibson@acs.nyc.gov>, robert malek <abc75.abc@gmail.com>

Mr. Brathwaite / court and all counsel,

To aid in our organization I placed this into a separate email since it was part of the response from the court regarding scheduling. Mr. Brathwaite, you asked me if there was anything specific.... Basically, ever since you / the court and the other attorneys of this case have decades more experience than I do in regards to cfs, (comprehensive family services) I'm just leaving it to you and the other attorneys to let me know if there is, are, were any. This is not knowledge I can obtain from my legal studies so I am just checking . For quite a while as you know I was missing court reports from cfs that I didn't obtain till much later. Trying to cover all bases if i may have missed anything.

Thank You,
Sincerely,
Robert Malek

Henderson Brathwaite <hbrathwa@nycourts.gov>

Wed, Jul 22, 2020 at 3:28 PM

To: robert malek <abc75abc@gmail.com>, Robert Maes <rmaes@bds.org>, "Johnson, Travis" <TMJohnson@legal-aid.org>, "nicola.gibson@acs.nyc.gov" <nicola.gibson@acs.nyc.gov>, robert malek <abc75.abc@gmail.com>

The Court has not received any other CFS reports. Thank you.

[Quoted text hidden]

Please be CAREFUL when clicking links or opening attachments from external senders.

30



robert malek <abc75abc@gmail.com>

Fw: do you have any affidavits from cfs ?

2 messages

abc75abc@gmail.com <abc75abc@gmail.com>
To: "nicola.gibson@acs.nyc.gov" <nicola.gibson@acs.nyc.gov>
Cc: "abc75abc@gmail.com" <abc75abc@gmail.com>

Tue, Jul 21, 2020 at 8:44 AM

mrs gibson,
i sent this to the other parties.
am i supposed to be ccing you as well or only if rosmil almonte is out of the office ?

sincerely,
robert malek

Sent from my Verizon LG Smartphone

----- Original message-----

From: abc75abc@gmail.com (mailto:abc75abc@gmail.com)
Date: Tue, Jul 21, 2020 8:00 AM
To: hbrathwa@nycourts.gov (mailto:hbrathwa@nycourts.gov);
Cc: Robert Maes;Rosmil Almonte, (ACS);abc75abc@gmail.com (mailto:;abc75abc@gmail.com);Travis Johnson;
Subject:do you have any affidavits from cfs ?

mr brathwaite,

i asked you this two times before. i was just checking. simple question. wanted to make sure i had everything.

thanks,
robert malek

Sent from my Verizon LG Smartphone

Gibson, Nicola (ACS) <Nicola.Gibson@acs.nyc.gov>
To: "abc75abc@gmail.com" <abc75abc@gmail.com>
Cc: "Johnson, Travis (TMJohnson@legal-aid.org)" <TMJohnson@legal-aid.org>, Robert Maes <rmaes@bds.org>

Tue, Jul 21, 2020 at 9:12 AM

31

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT MALEK, ROBERT MALEK C/O M.M.

VS.

NEW YORK STATE UNIFIED COURT SYSTEM

NYC CHILDREN, AKA ACS (ADMINISTRATION FOR CHILDRENS SERVICES)

NY STATE OFFICE OF CHILDREN AND FAMILY SERVICES

NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL

JANET DIFIORE

CASE NUMBER : 21CV1230

SHEILA POOLE

JACQUELINE WILLIAMS

VERIFICATION

BEVERLY STANLEY

ROSMIL ALMONTE

TRAVIS JOHNSON

MARGARET INGOGLIA

**I, ROBERT MALEK, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
FACTUALLY TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.**

ANY OPINIONS STATED ARE HONESTLY MY OPINIONS.

ANY STATEMENTS MADE I HONESTLY BELIEVE TO BE CORRECT.

ANY PROCEDURES UNDERTAKEN I HONESTLY BELIEVE TO BE PROPER.

EXECUTED ON : 4-14-2022

NAME OF DECLARANT :



ROBERT MALEK