No. 24-____

IN THE

Supreme Court of the United States

LINNEA W.,

Petitioner,

—v.—

MATTHEW P.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

1. May a state court elect to contravene its own state laws, which explicitly require the award of legal fees and representation of counsel, in violation of the Fifth and Fourteenth Amendments?
2. May state courts unconstitutionally intrude upon the role of the State legislature by arbitrarily dispelling the State's own laws and prevailing rulings that require an award of legal fees to obtain counsel in custody trials and the right to counsel?

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IV. RELEVANT PROCEEDINGS IN THE STATE COURTS

- *Wexler v. Parrott*, No. 291083/20, Family Court of the State of New York. Judgment entered June 7, 2022. See Appendix 1.
- *In the Matter of Matthew P. v. Linnea W., In the Matter of Linnea W. v. Matthew P.*, No. 2022-02782, Supreme Court of the State of New York, Appellate Division, First Department affirmed lower court decision. October 12, 2023. See Appendix 2.
- *Wexler v. Parrott*, No. 2022-02782, Supreme Court of the State of New York, Appellate Division, First Department, denial of motion for reargument and in the alternative for leave to appeal. February 15, 2024. See Appendix 3.
- *In the Matter of Matthew P. v. Linnea W., In the Matter of Linnea W. v. Matthew P.*, No. 2024-237, State of New York, Court of Appeals dismissal of motion for leave to appeal. June 20, 2024. See Appendix 4.

V. JURISDICTION

Petitioner's motion for leave to appeal to the State of New York, Court of Appeals was denied on June 20, 2024. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(a), having timely filed this petition for a writ of certiorari within the extension period granted by this Court (See Appendix 5).

VI. LAW INVOLVED

Federal Law

United States Constitution, Amendment V:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Article I, Section 4:
The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.
The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday

in December, unless they shall by Law appoint a different Day.

28 U.S.C. §1257(a):
Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

State law

New York State Constitution in pertinent part:

Article I, §1 "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof," Article I, §5 "nor shall cruel and unusual punishments be inflicted," Article I §6 "No person shall be deprived of life, liberty or property without due process of law," and Article I, §11 "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

New York State Statutes – Full text attached as Appendix 6

Family Court Act §261. Legislative findings and purpose. – Rights to counsel in custody proceedings.

Family Court Act §262. Rights to be represented by counsel of his or her own choosing the right to have

an adjournment to confer with counsel, and of the right to have counsel assigned.

Family Court Act §438. Provides for the award of counsel fees.

Domestic Relations Law §237(b). Provides for the award of attorneys' fees at anytime.

Social Services Law SOS §384-b. "The legislature recognizes that the health and safety of children is of paramount importance... it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children…"

22 NYCRR 100.3(B)(6) – (B) Adjudicative responsibilities. Prohibitions on *ex parte* communications.

VII. STATEMENT OF THE CASE

This case involves the decision of the state courts of New York to deny a party representation of counsel, due process, equal protections of the law, and the very guarantees provided by state law to protect such rights and afford one a fair trial in a custody dispute. Family Court Act ("FCA") §261 expressly provides:

> Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society…, and therefore have a constitutional right to counsel in such proceedings.

Despite this statutory and constitutional guarantee to counsel in a custodial proceeding, the Family Court below denied Petitioner the right to any counsel and

the right to an award of legal fees to retain said counsel. When such denial was appealed, the Appellate Division dismissed such appeal, and the Court of Appeals denied the right to appeal.

In addition to the orders issued and attached in the Appendices, the Family Court judge on November 30, 2021, repeatedly stated in open court, in direct contravention of the law in New York, in response to a motion by Petitioner for legal fees that the "right [to award legal fees] does not exist in Family Court." The judge then proceeded to ask opposing counsel and the AFC if she was wrong. Respondent's attorney and the AFC then failed to correct the judge in spite of an ethical obligation to present the law as written and obligation to be truthful.

The judge below was wrong as such right is expressly provided for in New York Domestic Relations Law ("DRL") §237(b) and FCA §438, with many cases in support of awarding counsel fees in a custody case.

The Federal and New York State Constitutions require due process and equal protections of the law in custody disputes. The New York statutes unwaveringly require counsel in custody disputes as New York FCA §262 expressly provides "**(a)** Each of the persons described below in this subdivision has the right to the assistance of counsel." Petitioner's case falls within many of said described provisions, including "the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child…"

New York DRL §237(b) provides in pertinent part:

> [In a matter] concerning custody, visitation or maintenance of a child, the court may

> direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment.

Clearly the New York State Legislature created a mechanism to ensure parties are properly represented in a custody dispute, their due process rights are protected, and that there is a level playing field in the courtroom, where money does not dictate the outcome of a case, but rather the law, which includes the Best Interests of the Child, clearly denied in the case below, and equities. With the exception of the case below, the New York courts have traditionally upheld such statutes, and the constitutional right to due process and equal protections of the law. "The intent of the provision [DRL §237] is to ensure a just resolution of the issues by creating a more level playing field with respect to the parties' respective abilities to pay counsel, 'to

make sure that marital litigation is shaped not by the power of the bankroll but by the power of the evidence.' Therefore, where the parties' respective financial positions gives one of them a distinct advantage over the other, the court may direct the monied [party] to pay counsel fees to the lawyer of the non-monied [party]." *Sykes v. Sykes,* 973 N.Y.S.2d 908, 911 (N.Y. Sup. Ct. 2013). DRL §237(b) also provides:

> Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses.

Even though Respondent spends millions of dollars in legal fees, he has never complied with this statute, *i.e.*, never filed any such affidavit, never disclosed any invoices, never provided a retainer agreement (Petitioner has provided two retainer agreements), nor a net worth statement which is also required by New York. In addition, FCA §438(a) provides:

> In any proceeding under this article, including proceedings for support of a spouse and children, or for support of children only, or at any hearing to modify or enforce an order entered in that proceeding…the court may allow counsel fees at any stage of the proceeding, to the attorney representing the

spouse, former spouse or person on behalf of children.

Petitioner's constitutional rights and statutory protections have been wrongfully denied. Petitioner has been required to proceed *pro se* in her child's custody dispute[1], forced to conduct cross-examination of their abuser, which was also abruptly and wrongfully cut short during the trial by the court below, while Respondent has unlimited resources, spending millions of dollars on counsel fees and filing dozens of motions, often *ex parte*. This has resulted in the stripping of Petitioner's parental rights to her young daughter and the child being stripped of rights to her own mother, loss of all custodial and meaningful visitation rights, rights to know anything about her own daughter, academically, medically, and about her life in general, without any due process. This has occurred because Petitioner does not have legal representation and the Family Court has unlawfully denied her any awards of legal fees. Petitioner has been repeatedly vetted and cleared as a fit and competent mother, with no findings of abuse or neglect. Petitioner was the sole caretaker of her daughter during the first two years of her child's life until Respondent filed a fraudulent filled *ex parte* motion to take the child away from Petitioner. The parties were never married and lived in separate residences. Respondent had shown little interest in

[1] There were some 18B attorneys appointed early on in the case who were abruptly removed from the case and completely ineffective in their brief period of "representation", including failing to even appear in court during hearings, and it has been years since Petitioner has had any counsel and denying Petitioner the legal fees she is entitled to retain competent counsel who can create a level playing field and protect Petitioner's due process rights in unconstitutional.

the child and rejected, neglected and resented her prior to filing said motion when the child was 22 months old. Without the award of legal fees to obtain counsel, all of Petitioner's rights and the child's rights in the custody case are denied, including the fundamental right of parenthood guaranteed by the U.S Constitution and a right expressly and repeatedly protected by this Court.

This case involves a trial often conducted *ex parte* (in violation of 22 NYCRR 100.3(B)(6)) with Petitioner denied the right to be in the courtroom during the trial and have any representation in court, nor in the numerous conferences held between Respondent, the Family Court judge and court attorney, and AFC. Even though Petitioner had numerous witnesses to be called in support of her case, her right to call witnesses has been denied with the exception of one witness called in July 2024, approximately three years after the trial began, such three years being primarily consumed by Respondent's case in chief, whose testimony was abruptly and unlawfully terminated by the judge below and thrown out at the mere request of Respondent. Denying the statutorily provided for legal fees to retain counsel who could advocate for a fair trial, conduct witness examinations, file legal papers, obtain trial transcripts, object to and prevent the extensive amount of *ex parte* trial testimony and *ex parte* communications between Respondent, the Family Court judge and court attorney, and AFC, has led to the obliteration of Petitioner's due process rights, and without counsel to advocate for her, due process and a fair trial are denied. Petitioner and the Family Court have conducted themselves in such an unlawful manner and to the detriment of the child, as to take every step possible to alienate her from her

mother, a child who longs for her mother. The Family Court often ensures that there are no transcripts of these *ex parte* communications between Respondent and the Family Court Judge and AFC in court, or that no transcript is ever provided to Petitioner if one even exists. The judge below often goes off the record and sometimes the recording device used to create transcripts during these *ex parte* communications by the judge with Respondent has been muted so no transcript can be created, thus further denying Petitioner the right to due process and a fair trial. Without the award of legal fees to obtain counsel, such obliteration of Respondent's legal rights and significant ongoing harm being caused to the child have become the standard, *albeit* unlawful, protocol in the case below.

This has resulted in Respondent, who has been violently abusive of Petitioner prior to their relationship ending, through the pregnancy and continues to be abusive through relentless lawfare and perjury, wherein the child has displayed many signs of physical abuse, maltreatment and a significant drop of her Body Mass Index from the 55th percentile when in the sole custody of Petitioner, to only the third percentile for her age group, and medically categorized as Failure to Thrive, while in the sole custody and care of Respondent, being granted temporary full custody for extensive periods of time since this case started four and half years ago, all to the preclusion of the young child being permitted to be in the care or presence of Petitioner.

Respondent has submitted 10,000's of pages of moving documents, and innumerable vexatious letters to the court, including many *ex parte* ones, asking for special favors of the Family Court, which are routinely granted. The Family Court has

acknowledged the astronomical volume of filings of Respondent, yet it is Petitioner who is denied her right to due process, *i.e.,* the right to file any motions or petitions with the court. Such unequal treatment and denial of due process are exacerbated by denying Petitioner any legal fees and counsel, which are statutorily mandated, while Respondent spends millions of dollars on legal fees.

This is in total variance with *Bower Assocs. V. Town of Pleasant Valley*, 2 N.Y. 3d 617, 630 (2004) which held that: "[t]he essence of a violation of the constitutional guarantee of equal protection is, of course, that all persons similarly situated must be treated alike." Despite unambiguous laws, both federal and state, and New York's desire of the child to remain with the birth parent (New York SOS §384-b), Petitioner is not treated alike, but rather denied her right to legal fees, counsel representation, and due process.

VIII. REASONS FOR GRANTING THE WRIT

A. Fundamental Constitutionally Protected Rights of Parents to Make Decisions Concerning the Care, Custody, and Control of, and Right of Upbringing, Their Children, Should Not be Denied

This Court has emphatically and consistently provided for a parent's constitutional right to raise her own child. *Washington v. Glucksberg*, 521 U.S. 702 (1997), held that the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children, citing to *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950), *Norlinger v. Hahn*, 505 U.S. 1, 10 (1992) and

Santosky v. Kramer, 455 U.S. 745 (1982). Although there is no denying that there is a constitutionally protected right of a parent to raise her own child, a right New York State legislatively protects by statutorily requiring the appointment of counsel and award of legal fees, the court below has eviscerated such right.

This Court in *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) held that "...the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.' We explained in Pierce that 'the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.' 268 U.S. at 535. We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. 321 U.S. at 166."

"In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *See, e.g., Stanley v. Illinois,* 405 U.S. 645, 651, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972) ('It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' (citation omitted)); *Wisconsin v. Yoder*, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) ('The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition'); *Quilloin v. Walcott*, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) ('We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected'); *Parham v. J. R.,* 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) ('Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course'); *Santosky v. Kramer,* 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (discussing 'the fundamental liberty interest of natural parents in the care, custody, and management of their child'); *Glucksberg, supra*, at 720 ('In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right…to direct the education and upbringing of one's

children' (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel* at p. 66. The Constitution ensures that the courts of New York have no right to deny any parent such rights, but that is exactly what the courts below did by denying (even more egregiously on a permanent basis) the award of legal fees to Petitioner to obtain counsel.

"Gideon held that it was an 'obvious truth' that providing counsel to those too poor to afford it is 'fundamental and essential to a fair trial.' Gideon also recognized the fact that the government and wealthier defendants hire attorneys in criminal cases demonstrates a 'strong' and 'widespread' belief that lawyers are 'necessities, not luxuries.' The Court concluded, 'in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.' These statements are no less applicable to adversarial civil cases implicating basic human needs: Most wealthy people would hire an attorney to avoid losing their home, their children, or, in cases that involve health or safety (such as domestic violence), potentially their very life. The typical indigent civil litigant cannot hope for a 'fair trial' when facing off alone in an adversarial proceeding against a landlord's attorney, or a bank, or a state's social services agency, or an abuser that brings the full force of intimidation into the courtroom." John Pollock, *It's All About Justice: Gideon and the Right to Counsel in Civil Cases,* ABA Human Rights Magazine, Vol. 39, No. 4 (2013).

"The Legal Services Corporation conducted a study that revealed a 'justice gap' among the poor when it comes to representation in civil cases…The National Center for State Courts estimates that in 75 percent of civil cases, litigants proceed without competent counsel because of an inability to afford an attorney. This reality wrongly makes wealth a determinative factor in a person's ability to access justice," says Professor Condon." Jodi L. Miller, *Equal Justice Under Law—Is Everyone Included?*, New Jersey State Bar Foundation – The Informed Citizen (2018). New York State purports to close this gap in custody cases. It is irrefutable in New York that a parent in a custody case is entitled to counsel. This is not discretionary. The statutes do not provide exceptions for the application of the law nor can the state courts circumvent due process rights. "[I]t is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action. Intelligent exercise of our appellate powers compels us to ask for the elimination of the obscurities and ambiguities from the opinions in such cases. Only then can we ascertain whether or not our jurisdiction to review should be invoked. Only by that procedure can the responsibility for striking down or upholding state legislation be fairly placed. For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states." *Minnesota v. Nat'l Tea Co.,* 309 U.S. 551, 557, 60 S. Ct. 676, 679 (1940).

Without the award of legal fees and representation of proper counsel, much of the trial is conducted *ex parte* without the presence of Petitioner or anyone on her behalf. Petitioner is forced, in an incredible infliction of sadistic cruelty by the Family Court, to appear *pro se* and have to cross-examine the very person who abused her in unspeakable terms for years and continues to do so through his lawfare and abuse and control of the court system in New York, which has enabled Respondent to deprive Petitioner of her Constitutional rights to be a parent with the support of this deprivation by the courts of New York. Having competent legal representation as required by New York State law and the dictates of due process and equal protections of the law, would help create a level playing field and abate many of the *ex parte* communications and the conducting of an *ex parte* trial which negate Petitioner's fundamental rights and help the child thrive through meaningful time spent with her mother.

To deny Petitioner any fairness and representation in court because she cannot afford legal fees, the court below and this Court "effectively exclude low-income children and their parents from legal relief, contravening children's fundamental constitutional rights to court access, parents' fundamental constitutional rights and responsibilities toward their children, and democratic norms." Lisa V. Martin, *No Right To Counsel, No Access Without: The Poor Child's Unconstitutional Catch-22,* 71 Fla. L. Rev 831 (2019).

"None of us believes banishing a child from a family of origin is a perfectly fine result," said Marty Guggenheim, a retired New York University law professor and child welfare expert who has argued termination cases before [this] Court. "But that's

where we are today. We are off of our moral compass." Agnel Philip and Eli Hager, and Suzy Khimm, *The "Death Penalty" of Child Welfare: In Six Months or Less, Some Parents Lose Their Kids Forever,* ProPublica and NBC News, December 20, 2022.

Although this case does not involve the actual termination of Petitioner's parental rights, her rights as a parent have been stripped by the court through countless "temporary" orders of protection ("TOP") throughout this case, all based upon the fraud filled *ex parte* filing of Respondent years prior, TOPs issued for 52 months, which continue to be demanded by Respondent without justification or any due process. "[T]ermination of a parent's rights to her child is tantamount to imposition of a civil death penalty…" *Drury v. Lang*, 105 Nev. 430, 433 (Nev. 1989). "A termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows." *In re Smith*, 77 Ohio App. 3d 1, 16 (Ohio Ct. App. 1991). *See In re K.A.W.,* 133 S.W.3d 1, 12 (Mo. banc 2004) "The termination of parental rights has been characterized as tantamount to a 'civil death penalty.'" *See also* Elizabeth Brico, *"The Civil Death Penalty"—My Motherhood Is Legally Terminated,* Filter Magazine, July 13, 2020. The denial of Petitioner's constitutional and statutory rights has resulted in the imposition of the civil death penalty upon her and her young daughter.

This Court in *Norlinger v. Hahn*, 505 U.S. 1, 10 (1992) held that the Equal Protection Clause "keeps governmental decision-makers from treating differently persons who are in all relevant respects alike." Without intervention by this Court, and the granting

of the writ, Petitioner's rights to due process and the equal protection of the laws will continue to be denied by the courts of New York and the ultimate harm known as the civil death penalty, which has been the outcome on a temporary basis for years and at other points in time during the custody case below, will become the permanent unjustified result.

B. State Courts Should Not be Permitted to Unconstitutionally Intrude Upon the Role of the State Legislature by Arbitrarily Dispelling its Own Laws Requiring Counsel to Represent Parents in Custody Trials

The New York State Legislature has passed numerous laws requiring the appointment of counsel to represent a parent in a custody trial. *See* FCA §§261 and 262. That same legislature passed numerous laws granting the authority to the courts of New York to award legal fees in custody disputes to the less monied party. *See* DRL §237(b) and FCA §438(a). There is no dispute that the Respondent has earnings of many millions of dollars a year, plus has extensive financial assets, whereas the Petitioner has a minimal source of income, unable to pay for counsel. The New York State Legislature also passed Social Services Law SOS§384-b which provides that: "The legislature recognizes that the health and safety of children is of paramount importance... it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children…"

However, the courts below have eviscerated such statutes to the detriment and violation of Petitioner's due process rights. This Court has previously held

that for a state court to do so, is unconstitutional and reversible error. In an analogous usurping of state law this Court held as follows: "We hold only that state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Moore v. Harper*, 600 U.S. 1, 36, (2023). This Court went on to further hold that "In interpreting state law in this area, state courts may not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution." *Id.* at 37.

In *Goss v. Lopez*, 419 U.S. 565, 572-573 (1975) this Court held that "The Fourteenth Amendment forbids the State to deprive any person of life, liberty, or property without due process of law. Protected interests in property are normally 'not created by the Constitution. Rather, they are created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits." *Board of Regents v. Roth*, 408 U.S. 564, 408 U.S. 577 (1972).

Accordingly, a state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process. *Connell v. Higginbotham,* 403 U.S. 207 (1971); *Wieman v. Updegraff*, 344 U.S. 183, 344 U.S. 191-192 (1952); *Arnett v. Kennedy*, 416 U.S. 134, 416 U.S. 164 (POWELL, J., concurring), 416 U.S. 171 (WHITE, J., concurring and dissenting) (1974). So may welfare recipients who have statutory rights to welfare as long as they maintain the specified qualifications. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Morrissey v. Brewer, 408 U.S. 471 (1972), applied the limitations of the Due Process Clause to governmental decisions to revoke parole, although a parolee has no constitutional right to that status. In like vein was *Wolff v. McDonnell,* 418 U.S. 539 (1974), where the procedural protections of the Due Process Clause were triggered by official cancellation of a prisoner's good time credits accumulated under state law, although those benefits were not mandated by the Constitution."

Similarly, here, to leave in place the decisions below, all the way through the New York Court of Appeals, to deny the statutory rights granted in New York to Petitioner to award of legal fees and the ability to have legal representation, would be to deny Petitioner the fundamental constitutionally protected right to due process and equal protections of the law. "Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education. Ohio Rev.Code Ann. §§ 3313.48 and 3313.64 (1972 and Supp. 1973) direct local authorities to provide a free education to all residents between five and 21 years of age, and a compulsory attendance law requires attendance for a school year of not less than 32 weeks." *Goss* at p. 573. This Court went on to hold that the Due Process clause applies if the state denies such persons that right. The same holds true here.

"Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so, and has required its children to attend. Those young people do not 'shed their constitutional rights' at the schoolhouse door. *Tinker v. Des Moines School Dist.,* 393 U.S. 503, 506 (1969)." *Id.* at p. 574. Likewise, Petitioner does not shed her rights to be represented by counsel nor her due process rights at the courthouse door; *albeit*

the courts of New York in the case below have unlawfully shed such rights.

"'The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures – Boards of Education not excepted.'" *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 319 U.S. 637 (1943). *Id.* at p.574. The intervention of this Court is required to protect Petitioner from the New York State courts themselves, as it is the State Legislature who created the protections for its citizens, protects due process and right to a fair trial through an award of legal fees to obtain proper legal representation, and it is the courts who unconstitutionally took away such protections and created their own legislation.

The New York Constitution provides for in pertinent part as follows: Article I, §1 "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof," Article I, §5 "nor shall cruel and unusual punishments be inflicted," Article I §6 "No person shall be deprived of life, liberty or property without due process of law," and Article I, §11 "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." Notwithstanding such state constitutional protections, the courts below have deprived Petitioner of the rights secured to any citizen concerning the very custody of her child.

The courts below disregard their own prior decision in *Bernadette R. v. Anthony L.*, 2022 N.Y. Slip Op. 3087 (1st Dep't. 2022) whereby the Appellate Division upheld the Family Court award of $62,009 in legal fees effective *nunc pro tunc*. The court held that: the "Family Court properly concluded that the submission of the retainer agreement with petitioner

mother's reply papers was not fatal to her motion for counsel fees, **since the Family Court Act is clear that an award of the counsel fees is mandatory, not discretionary** (Family Court Act §§ 454[3]; 438[b]; see *Matter of Monique B. v. Anthony S.*, 163 A.D.3d 404, 405 (1st Dep't. 2018); *Brantly v. Brantly*, 89 A.D.3d 881, 883 (2d Dep't. 2011) (emphasis added). Furthermore, the mother's attorneys substantially complied with the requirements of 22 NYCRR 1400.3, and to deny the mother's request for counsel fees under these circumstances would permit the father to avoid an adverse consequence of his violation of the parties' so-ordered child support agreement. Moreover, the rules pertaining to domestic relations matters (22 NYCRR part 1400 et seq.) were promulgated to govern the relationship between attorneys and clients and address abuses by attorneys against clients in such cases (see *Julien v. Machson*, 245 A.D.2d 122 [1st Dept 1997]; *Schmitt v. Schmitt*, 107 A.D.3d 1529, 1531 [4th Dept 2013]; *Matter of Serazio-Plant [Channing],* 299 A.D.2d 696, 698 [3d Dept 2002], lv denied 100 N.Y.2d 512 [2003]). Accordingly, it would be inappropriate to permit the father to avoid his obligation by asserting the mother's attorneys' noncompliance with those rules in this proceeding."

The Family Court, in an abuse of Petitioner's due process rights, gave Petitioner only one day to draft a motion for legal fees pro se, otherwise it would not entertain a motion for legal fees. No such limitation is supported anywhere in the New York State statutes or common law. The motion contained retainer agreements and counsel invoices. It is to be noted that no such unjust rules or denial of due process have ever been applied to Respondent.

The Family Court acknowledged its total disregard for the law in New York, denied legal fees and ignored Respondent's noncompliance with the very statutes demanded of him. The Appellate Division also wrongfully claimed that Petitioner had not presented retainer agreements, even though Petitioner had presented two retainer agreements with her motion for legal fees. The court erred in failing to apply the law equally and should have dismissed Respondent's oral objections to an award of legal fees as he never submitted a net worth statement, an affidavit regarding legal fee invoices from his counsel nor any legal fee invoices, a retainer agreement or opposition papers to Petitioner's motion for legal fees. The courts below do not have the right to arrogate the statutes governing such circumstances. Failure of the court below to award a single penny of legal fees to Petitioner while Respondent, who is an attorney himself, spending millions of dollars on legal fees in the case below, circumvents the purpose and meaning behind DRL §237 and FCA §438, is an unlawful act of a state court usurping the legislative process.

In *Balber v. Zealand*, 169 A.D.3d 500 (1st Dep't. 2019), a custody dispute involving unmarried parents, the court affirmed the lower court award of $120,000 in legal fees to the mother. The court held that the "Supreme Court appropriately relied on Domestic Relations Law §237(b) in awarding the mother fees on her initial application, and could have relied on it again in its second award. The statute's plain language disproves respondent's arguments about the statute's inapplicability to custody disputes between unmarried parents, as it contemplates a fee award to a 'spouse' or 'parent' in custody proceedings either arising under Domestic Relations Law § 240 or

otherwise." *Id*. at 500. The court went on further to hold that: "[t]his and other courts have accordingly awarded counsel fees to an unmarried parent in a custody dispute on Domestic Relations Law § 237(b) grounds [citations omitted]." *Id*. at 500-501. The courts cannot in effect create their own legislation and ignore the laws passed by the New York Legislature.

DRL §237 expressly provides: "[a]pplications for the award of fees and expenses may be made at any time or times prior to final judgment." Furthermore, it is well established in New York as provided for in *Frankel v. Frankel*, 2 N.Y.3d 601 (2004), where the Court of Appeals recognized that "more frequent interim counsel fee awards would prevent accumulation of bills" (*id*. at 605 n 1). Throughout the case below, Petitioner established that she is the non-monied parent, while Respondent has unlimited resources, and the Constitution, state statutes and justice require that Petitioner be given the benefit of the statutory presumption and be awarded counsel fees to obtain legal representation. In defiance of these fundamental guaranteed rights, the court below, with appeals denied, in rulings that run contrary to the explicit statutory right, has repeatedly advised Petitioner that she may not file a motion for legal fees. The State courts have effectively rewritten the statutes.

The Appellate Division held in *Fraguela v. Fraguela*, 177 A.D.2d 910, 913 (3d Dep't. 1991) "[t]his application is a departure from the norm in that plaintiff discharged her initial attorney, is not seeking funds to continue counsel's services and, based on substantial efforts to obtain new counsel, indicates that she does not have the resources or funds to hire new counsel without payment of

substantial funds in advance. She thus finds herself unable to obtain an affidavit without hiring counsel but has no funds to hire such counsel. Since an award of counsel fees may be made to a spouse…it does not appear that Supreme Court erred in awarding plaintiff prospective counsel fees (see, *DeCabrera v. Cabrera-Rosete*, 70 N.Y.2d 879, 881 [N.Y. 1987]; *Ross v. Ross*, 157 A.D.2d 652 [2d Dep't. 1990])."

"In order to ensure that the parties will have equal access to skilled legal representation, the Domestic Relations Law authorizes awards of interim counsel fees to the non-monied [party] during the course of the litigation. Because of the importance of such awards to the fundamental fairness of the proceedings, we hold that an application for interim counsel fees to the non-monied [party] in a divorce action should not be denied – or deferred until after the trial, which functions as a denial – without good cause, articulated by a court in a written decision." *Prichep v. Prichep*, 52 A.D.3d 61, 62 (2d Dep't. 2008).[2]

While the amount of counsel fees awarded varies to match the circumstances of each unique case, courts have repeatedly ordered large fee awards when that is what equity requires. *See Trafelet v. Trafelet*, 79 N.Y.S.3d 129 (1st Dep't. 2020) (court affirmed $3,500,000 interim counsel fee award as not excessive); and *Anonymous v. Anonymous*, 136 A.D.3d 506, 507 (1st Dept 2016) (affirming interim counsel fee award of over $976,186 and additional award of $121,973 for forensic accounting fees and costs, for "child-related issues"). The New York State Court of Appeals had made it clear prior to the instant case, that an award of legal fees to a similarly situated

[2] Same statutes govern custody disputes as well, including between parents who were never married.

person as Petitioner is appropriate and should have been made. The court in *O'Shea v. O'Shea,* 93 N.Y.2d 187, 190 (1999) in awarding the wife legal fees under DRL §237(a), language which mimics DRL §237(b), "This enactment, which has deep statutory roots, is designed to redress the economic disparity between the monied spouse and the non-monied spouse. Recognizing that the financial strength of matrimonial litigants is often unequal – working most typically against the wife – the Legislature invested trial judges with the discretion to make the more affluent spouse pay for legal expenses of the needier one. The courts are to see to it that the matrimonial scales of justice are not unbalanced."

By denying the award of legal fees and the right to counsel, Petitioner has been wrongfully disfranchised, deprived of her rights and privileges secured to any citizen thereof, deprived of life, liberty or property without due process of law, and deprived of her fundamental right to a fair trial and equal protections of the law. If the writ is not granted, then the New York State courts will have the right to legislate and intrude on the role of the State Legislature, and trample upon both the legislative process and Constitution.[3]

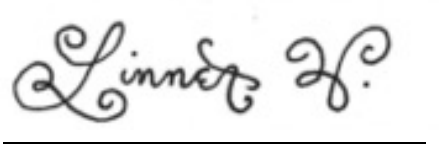
[3] It is the intention of Petitioner to have legal representation for any oral arguments before this Court.

IX. CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the New York Court of Appeals.

DATED this 7th day of November, 2024.

Respectfully Submitted,



Linnea W., Appearing *Pro Se*
500 East 77th Street
Apt. 1510
New York, New York 10162
linnealegal@gmail.com

APPENDIX

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Appendix 1

FAMILY COURT OF NEW YORK

At a term of the Family Court of the State of New York, held in and for the County of New York, 60 Lafayette Street, New York, New York on December 1, 2021

P R E S E N T:

HON. GIGI N. PARRIS
Judge of the Family Court

ORDER

File #142926

Docket Nos.
O-04643/20
O-2893/20
O-015691/21
V-02893/20; 21A; 21B
V-03036/20; 21A

In the Matter of,

Linnea Wexler,

Petitioner/Respondent

—against—

Matthew Parrott,

Respondent/Petitioner

NOTICE: 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 THE APPELLANT BY THE CLERK OF THE COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

PARRIS, G., J.F.C.:

The within matters were heard before this Court on December 1, 2021, wherein assigned counsel for Ms. Wexler made an application, via notice of motion, to be relieved as Ms. Wexler's counsel. Assigned counsel was the fourth attorney who sought to be relieved of representing Ms. Wexler. This request was granted, and Ms. Wexler was appointed another attorney to represent her in the within proceedings.

At the December 1, 2021 court appearance, Ms. Wexler made an oral application for this Court to order Mr. Parrott to pay her legal fees, despite the fact that she was not represented by retained counsel. Ms. Wexler indicated that she filed a motion for said fees, however, a motion was never calendared with the Court.[1] Mr. Parrott's counsel objected to the Court issuing an order for fees and argued that by granting such request, the Court would essentially be

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[1] During the December 1, 2021 court appearance, Ms. Wexler emailed the Court and counsel a copy of her motion, which is 340 pages in length and requests various other forms of relief. The motion was never formally filed with the Court.

writing a blank check for Mr. Parrott to pay an unnamed amount of legal fees for an unknown attorney. The Attorney for the Child did not take a position. As indicated during the court appearance, based upon the foregoing reasons, this Court denied Ms. Wexler's application.

It is well settled that the Family Court may award counsel fees in certain proceedings (See N.Y. Fam. Ct. Act §§ 438, 536, 842; See also N.Y. Dom. Rel. Law § 237[a]; Matter of Paul A. v Shaundell LL., 117 AD3d 1346 [3d Dept 2014]). An award of counsel fees is committed to the discretion of the Family Court. In determining whether to award counsel fees, the court may consider "the parties' ability to pay, the nature and extent of the services rendered, the complexity of the issues involved, and counsel's experience, ability, and reputation" (see Matter of Christy v. Christy, 182 AD3d 596 [2d Dept 2020]; see also Matter of Barcia v Barcia, 90 AD3d 921 [2d Dept 2011]; Matter of Grald v Grald, 33 AD3d 922 [2d Dept 2006]; Matter of Herschbein v. Herschbein, 308 AD2d 585 [2nd Dept 2003]).

Ms. Wexler cites to the Appellate Division, First Department opinion in the Matter of Brookelyn M. v. Christopher M., 161 AD3d 662 [1st Dept 2018] in support of her position that a Court can issue an unknown award for counsel fees where a party has not yet retained counsel. Ms. Wexler's argument is misplaced. In the Matter of Brookelyn M., the parties, who cross-moved for legal fees, were already represented by counsel. Additionally, the parties sought an award of a specific amount of legal fees that were due and owed to their respective attorneys for their representation in the matters that were pending before the Family Court jurist.

In the instant matter, Ms. Wexler has not retained counsel, is currently representing herself, and has not put forth a specific amount of legal fees she owes for litigating the within matters. This Court agrees with counsel for Mr. Parrott that, in essence, Ms. Wexler is requesting that this Court award Ms. Wexler a blank check to hire any attorney of her choosing. Such application is not within the purview of this Court. Accordingly, the Court, in its discretion, is denying such request.

Additionally, even if this Court were to find that it was permitted to entertain such application, Ms. Wexler failed to provide this Court with the required affidavits and exhibits as to the requested application for fees, namely an affidavit from Ms. Wexler's counsel as to the reasonableness of said fees as well as a fully executed retainer agreement (see Matter of Filiaci v. Filiaci, 68 AD3d 1810 [4th Dept 2009]; Matter of Winkelman v. Furey, 97 NY2d 711 [2002]; Matter of Cooper v. Cooper 179 AD2d 1035 [4th Dept 1992]).

Thus, based upon the aforementioned, Ms. Wexler's application is denied. This constitutes the decision of the Court.

Dated: New York, New York

June 7, 2022

ENTER:

Gigi N. Parris
Hon. Gigi N. Parris, J.F.C.

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]: _____

X Order received in court on (INSERT) via electronic mail to counsel

Courtesy copy e-mailed to counsel on [specify date(s) and to whom e-mailed]: _____

Appendix 2

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Webber, J.P., Kern, Singh, Scarpulla, Rosado, JJ.

Docket Nos.
O-04643/20
O-02893/20
O-015691/20
V-02893/20; 21A; 21B
V-03036/20; 21A
Case No. 2022-02782

---

753 In the Matter of MATTHEW P.,

Petitioner-Respondent,

—against—

LINNEA W.,

Respondent-Appellant.

In the Matter of LINNEA W.,

Petitioner-Appellant,

—against—

MATTHEW P.,

Respondent-Respondent.

Linnea W., appellant pro se.

The Kepanis Law Firm, P.C., New York (Douglas S. Kepanis of counsel), for respondent.

Order, Family Court, New York County (Gigi N. Parris, J.), entered on or about June 7, 2022, which denied respondent mother's motion for prospective counsel fees, unanimously affirmed, without costs.

Family Court providently exercised its discretion in denying the mother's motion for prospective counsel fees. In support, the mother failed to submit the required affidavits and exhibits as to the requested application for fees, including an affidavit from counsel as to the reasonableness of said fees as well as a fully executed retainer agreement (*see Domestic Relations Law* § 237[b]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 12, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

Appendix 3

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Troy K. Webber, Justice Presiding
Cynthia S. Kern
Anil C. Singh
Saliann Scarpulla
Llinét M. Rosado, Justices.

Confidential
Motion No. 2023-05036
Docket Nos. O-04643/20
O-02893/20
O-015691/20
V-02893/20; 21A; 21B
V-03036/20; 21A
Case No. 2022-02782

In the Matter of Matthew P.,
Petitioner-Respondent,
—against—
Linnea W.,
Respondent-Appellant.

In the Matter of Linnea W.,
Petitioner-Appellant,
—against—
Matthew P.,
Respondent-Respondent.

Petitioner-appellant, pro se, having moved for reargument of, or, in the alternative, for leave to appeal to the Court of Appeals from, the decision and order of this Court, entered on October 12, 2023 (Appeal No. 753),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: February 15, 2024

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

Appendix 4

State of New York
Court of Appeals

Decided and Entered on the twentieth day of June, 2024

Present, Hon. Rowan D. Wilson,
Chief Judge, presiding.

Mo. No. 2024-237
In the Matter of Matthew P.,
Respondent,
—v.—
Linnea W.,
Appellant.

In the Matter of Linnea W.,
Appellant,
—v.—
Matthew P.,
Respondent.

Appellant having moved for leave to appeal to the Court of Appeals in the above causes;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceedings within the meaning of the Constitution.

/s/ Lisa LeCours
Clerk of the Court

Appendix 5

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott. S. Harris
Clerk of the Court
(202) 479-3011

September 19, 2024

Ms. Linnea W.
500 East 77th Street
Apt. 1510
New York, NY 10162

Re: Linnea W.
v. Matthew P.
Application No. 24A282

Dear Ms. W.:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on September 19, 2024, extended the time to and including November 18, 2024.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by /s/ Emily Walker

Emily Walker
Case Analyst

Appendix 6

Applicable Statutes

Family Court Act §261. Legislative findings and purpose. Persons involved in certain family court proceedings may face the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges, and therefore have a constitutional right to counsel in such proceedings. Counsel is often indispensable to a practical realization of due process of law and may be helpful to the court in making reasoned determinations of fact and proper orders of disposition. The purpose of this part is to provide a means for implementing the right to assigned counsel for indigent persons in proceedings under this act.

Family Court Act §262. (a) Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same:

(i) the respondent in any proceeding under article ten or ten-A of this act and the petitioner in any proceeding under part eight of article ten of this act;

(ii) the petitioner and the respondent in any proceeding under article eight of this act;

(iii) the respondent in any proceeding under part three of article six of this act;

(iv) the parent or person legally responsible, foster parent, or other person having physical or legal custody of the child in any proceeding under article ten or ten-A of this act or section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-b of the social services law, and a non-custodial parent or grandparent served with notice pursuant to paragraph (e) of subdivision two of section three hundred eighty-four-a of the social services law;

(v) the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding before the court in which the court has jurisdiction to determine such custody;

(vi) any person in any proceeding before the court in which an order or other determination is being sought to hold such person in contempt of the court or in willful violation of a previous order of the court, except for a contempt which may be punished summarily under section seven hundred fifty-five of the judiciary law;

(vii) the parent of a child in any adoption proceeding who opposes the adoption of such child.

(viii) the respondent in any proceeding under article five of this act in relation to the establishment of paternity.

(ix) in a proceeding under article ten-C of this act:

(1) a parent or caretaker as such terms are defined in section one thousand ninety-two of this act;

(2) an interested adult as such term is defined in section one thousand ninety-two of this act provided that:

(A) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act was removed from the care of such interested adult;

(B) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resides with the interested adult; or

(C) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resided with such interested adult immediately prior to the filing of the petition under article ten-C of this act;

(3) any interested adult as such term is defined in section one thousand ninety-two of this act or any person made a party to the article ten-C proceeding pursuant to subdivision (c) of section one thousand ninety-four of this act for whom the court orders counsel appointed pursuant to subdivision (d) of section one thousand ninety-four of this act.

(b) Assignment of counsel in other cases. In addition to the cases listed in subdivision (a) of this section, a judge may assign counsel to represent any adult in a proceeding under this act if he determines that such assignment of counsel is mandated by the constitution of the state of New York or of the United States, and includes such determination in the order assigning counsel;

(c) Implementation. Any order for the assignment of counsel issued under this part shall be implemented as provided in article eighteen-B of the county law.

Family Court Act §438. (a) In any proceeding under this article, including proceedings for support of a spouse and children, or for support of children only, or at any hearing to modify or enforce an order entered in that proceeding or a proceeding to modify a decree of divorce, separation, or annulment,

including an appeal under article eleven, the court may allow counsel fees at any stage of the proceeding, to the attorney representing the spouse, former spouse or person on behalf of children.

(b) In any proceeding for failure to obey any lawful order compelling payment of support of a spouse or former spouse and children, or of children only, the court shall, upon a finding that such failure was willful, order respondent to pay counsel fees to the attorney representing the petitioner or person on behalf of the children. Representation by an attorney pursuant to paragraph (b) of subdivision nine of section one hundred eleven-b of the social services law shall not preclude an award of counsel fees to an applicant which would otherwise be allowed under this section.

Domestic Relations Law §237(b). Counsel fees and expenses. (b) Upon any application to enforce, annul or modify an order or judgment for alimony, maintenance, distributive award, distribution of marital property or for custody, visitation, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty of this article provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct a spouse or parent to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse or parent to enable the other party to carry on or defend the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's

discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement, between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

Social Services Law SOS§384-b. 1. Statement of legislative findings and intent. (a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best

be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

22 NYCRR 100.3(B)(6) – (B) Adjudicative responsibilities.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.