

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NEW YORK COUNTY LAWYERS’	:
ASSOCIATION,	:
	:
Plaintiff,	:
	:
- against -	:
	:
GEORGE E. PATAKI, in his official capacity as	:
Governor of the State of New York, and THE	:
STATE OF NEW YORK,	:
	: Index No. _____
Defendants.	:
	: COMPLAINT

- x

New York County Lawyers’ Association (“NYCLA” or “Plaintiff”), by its attorneys Davis Polk & Wardwell, for its complaint alleges:

NATURE OF THE ACTION

1. NYCLA brings this action seeking declaratory and injunctive relief against Governor George E. Pataki and the State of New York (together “Defendants”) to prevent violations of the state and federal constitutional rights of children and indigent adults entitled to legal representation by assigned private counsel in family and criminal court proceedings at the trial and appellate levels in New York City. Specifically, NYCLA alleges that the compensation scheme for assigned private counsel who appear in these proceedings – which has been frozen for nearly a decade and a half – no longer ensures

that children and indigent adults have access to meaningful and effective legal representation as required by the New York and United States Constitutions.

2. Through their inaction, Defendants have allowed New York City's system of representation by assigned private counsel to deteriorate to a point where it now subjects children and indigent adults to a severe and unacceptably high risk that meaningful and effective representation no longer will be provided. Indeed, Defendants' refusal to act to protect the constitutional rights of children and indigent adults has placed the entire system on the brink of collapse, thereby creating an imminent threat that future violations of their rights to counsel and to due process of law will be even more pervasive and widespread.

3. The state and federal constitutional violations complained of herein are systemic, and threaten irreparable injury to all children and indigent adults in New York City who are assigned private counsel in family or criminal court proceedings.

4. As noted, nearly fifteen years have passed since Defendants last increased the rate at which private counsel assigned to represent children and indigent adults are compensated pursuant to Article 18-B of the New York County Law ("County Law"), Article 2 of the Family Court Act, and Article 2 of the Judiciary Law. These statutes are codified at § 722 of the County Law, §§ 211-62 of the Family Court Act, and §§ 2-39 of the Judiciary Law, respectively. Defendants also have failed to remove, or to raise, the limits or "caps" these statutes impose on the total amount of compensation assigned private counsel may receive per case, regardless of the number of hours actually worked.

5. Section 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law all provide that compensation paid to private counsel assigned to represent children and indigent adults shall not exceed \$25 per hour for work outside court and \$40 per hour for work in court. The rate for appellate work in criminal cases is fixed at \$40 per hour. These sections also impose an \$800 cap on the amount assigned private counsel may receive for misdemeanor cases and all Family Court matters, and a \$1,200 cap for felony cases and all appellate matters. Exceptions to the rates and caps listed above may be made only in “extraordinary circumstances” upon application to the court. As noted, this compensation scheme has not been changed since 1986.

6. These hourly rates are far too low to ensure that qualified private counsel will be available and able to provide meaningful representation to all children and indigent adults entitled to such representation in New York City. Similarly, both the distinction between in-court and out-of-court work and the caps on attorney compensation are arbitrary and combine to discourage assigned private counsel from adequately preparing their clients’ cases prior to a hearing or trial on the matter.

7. Chief Judge Judith S. Kaye of the State of New York in her recent State of Judiciary Address stated that these rates were “barely adequate” to attract and sustain participation by a sufficient number of qualified private attorneys when they were fixed in 1986 and now are so “completely out of line with today’s economic realities” that there has been “a mass exodus of attorneys from the assigned counsel panels” from which all assigned private counsel must be drawn. Hon. Judith S. Kaye, New York State of the Judiciary Address, Jan. 10, 2000.

8. Chief Administrative Judge Jonathan Lippman and Deputy Chief Juanita Bing Newton of the New York State Office of Court Administration (“OCA”) recently issued a report entitled “Assigned Counsel Compensation in New York: A Growing Crisis” (the “Report”) in which OCA concludes that the rates are “woefully inadequate” to ensure that children and indigent adults receive adequate legal representation by assigned private counsel in family and criminal court proceedings. See Report at 1. A copy of the Report is attached to this Complaint as Exhibit A.

9. Participation in the assigned counsel program is voluntary. Because the rates fall far short of meeting the cost of providing adequate legal representation, the number of attorneys in the First and Second Departments who actively participate in the assigned counsel program has plummeted in the past ten years. Yet, the number of children and indigent adults in New York City required to be represented by assigned private counsel in family and criminal court proceedings at the trial and appellate levels has increased dramatically.

10. To meet this growing demand, those lawyers who still participate in the assigned counsel program must take on more cases, which, in turn, increases the risk that they will be unable to give sufficient attention to any client and causes severe delays in the administration of justice. Further decreases in the number of attorneys actively taking assigned cases – which are inevitable under the current rate structure – will result in an even greater strain upon the assigned counsel system.

11. Statements by key Judicial and Executive Branch officials, official court reports, and caseload data for the private attorneys who still participate in the assigned

counsel program demonstrate that New York City's system of representation by assigned private counsel is in crisis, and that the current crisis is the direct result of Defendants' failure to act to protect the constitutional rights of children and indigent adults as more fully set forth below.

12. By this complaint NYCLA asks this Court to declare the following: (i) that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children and indigent adults in New York City; (ii) that Defendants' failure to increase the rates paid to assigned private counsel, to abolish the arbitrary distinction between the rates paid for in-court and out-of-court work, and to remove the caps on total compensation per case has created a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions; (iii) that those portions of § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law fixing these rates and limits are unconstitutional as applied to the representation of children and indigent adults in New York City; and (iv) that Defendants' intentional and persistent failure to provide sufficient compensation to assigned private counsel tortiously interferes with NYCLA's continuing obligation under the assigned counsel program to provide a list of attorneys competent to give meaningful and effective representation to children and indigent adults in New York City.

13. As remedies therefor, NYCLA seeks an injunction setting new rates, abolishing the distinction between the rates paid for in-court and out-of-court work, and

removing the current limits on compensation for private counsel who participate in the assigned counsel program. NYCLA asks that the Court set new rates, both preliminarily and permanently, at a level sufficient to ensure that qualified private counsel are available and able to provide children and indigent adults in New York City with constitutionally adequate representation in family and criminal court proceedings at the trial and appellate levels. NYCLA also seeks an injunction barring Defendants from future interference with the performance of its obligations in connection with the assigned counsel program.

14. In addition, NYCLA seeks an award of costs and disbursements of this action including attorneys' fees.

PARTIES AND VENUE

15. NYCLA is a not-for-profit association of attorneys who practice primarily in New York County. NYCLA is organized and operated with the objectives of promoting the administration of justice and reforms in the law which are in the public interest, applying its knowledge and experience in the field of law to the promotion of the public good, and arranging for the provision of legal services for children and indigent adults.

16. NYCLA was an original drafter and co-sponsor of the Assigned Counsel Plan (the "Plan") governing representation of indigent adults by assigned private counsel in criminal trial and appellate proceedings in the First Department. The Plan was adopted in 1965 pursuant to Article 18-B of the County Law and New York City Executive Order No. 178. NYCLA, the Bronx County Bar Association ("Bronx Bar Association"), and the Association of the Bar of the City of New York ("City Bar Association"), are required

by the Plan, among other things, “to prepare and certify to the appropriate Administrator . . . a list of attorneys . . . who, in the opinion of the bar association, which shall consider their experience in criminal practice, are competent to give adequate representation to defendants under Article 18-B of the County Law.” Plan, Art. II. The Plan also requires NYCLA and the other bar associations to make “[a]dditions to and deletions from the panel . . . from time to time . . . in accordance with the same principles observed by the bar association initially certifying the list of attorneys to the Administrator or Administrators.” Id. ¶ 5.

17. The Plan established a Central Screening Committee (the “Screening Committee”) to pass upon the qualifications of private attorneys seeking to serve on the Assigned Counsel Criminal Panel (the “Criminal Panel”) and thereby limit the Panel to attorneys capable of providing meaningful and effective representation. The Screening Committee is composed of representatives from NYCLA, the Bronx Bar Association and the City Bar Association. NYCLA also provides funding, meeting space, and other amenities to the Screening Committee.

18. Twelve of the thirty-four current members of the Screening Committee are also NYCLA members. In addition, one hundred-forty NYCLA members currently serve on the Criminal Panel, and eighteen serve on the Assigned Counsel Family Court Panel (the “Family Court Panel”) from which law guardians and private counsel are assigned to represent indigent children and adults, respectively, in Family Court in New York City. The Family Court Panel has its own screening committee currently composed of twenty-three members, five of whom are also NYCLA members. The NYCLA members who

serve on the Screening Committee and the Family and Criminal Court Panels would have standing as individuals to bring this lawsuit.

19. NYCLA and its members are essential participants in the Plan and the Family Court and Criminal Panels, and are committed to the fundamental principles that qualified private counsel must be available to children and indigent adults in New York City and that the rates of compensation Defendants set for participants in the assigned counsel program must be sufficient to ensure that their clients receive the meaningful and effective legal representation to which they are constitutionally entitled.

20. Moreover, as an original co-sponsor and facilitator of the Plan and the Criminal Panel, NYCLA is an appropriate organization to represent the children and indigent adults whose constitutional rights are at issue in this lawsuit. Neither the declaratory and injunctive relief requested in this Complaint, nor the claims asserted herein require individual NYCLA members to participate in this action.

21. Defendant George E. Pataki is the Governor of the State of New York. As such, he is ultimately responsible for the implementation and execution of the State's laws including § 722 of the County Law, §§ 211-62 of the Family Court Act, and §§ 2-39 of the Judiciary Law. Defendant Pataki is sued in his official capacity.

22. Defendant State of New York is required by its own Constitution, the statutes cited above, and the United States Constitution, to provide meaningful and effective legal representation to children and indigent adults in New York State Family and Criminal Court proceedings as set forth more fully below.

23. This Court has jurisdiction over this action pursuant to Article 30 of the New York Civil Practice Law and Rules (“CPLR”), § 3001. Venue is proper in this Court pursuant to Article 5 of the CPLR, §§ 503(a), (c).

BACKGROUND

A. The Right to Assigned Counsel in New York State

24. The right to assigned counsel in Family Court proceedings is firmly established in New York State for children and indigent adults. The Family Court Act, which with its adoption in 1962 placed New York at the forefront of the protection of children’s rights, provides that each child who is the subject of a Family Court proceeding, or of an appeal of a proceeding originating in the Family Court, is entitled to representation by counsel of his or her choosing or by a law guardian appointed by the State. See N.Y. Fam. Ct. Act § 241 (McKinney 1998).

25. Juveniles accused of crimes, who are tried in family rather than criminal court, also have a right to assigned counsel. In 1967, the United States Supreme Court concluded that when a child faces a loss of liberty, he or she is constitutionally entitled to meaningful and effective assistance of counsel. See In re Gault, 387 U.S. 1 (1967).

26. Separate and apart from federal constitutional requirements, New York State law independently affords children with a right to assigned counsel. Indeed, New York’s Constitution and statutes provide far more extensive protections in this area than federal constitutional law requires.

27. For example, New York Courts, following the reasoning of Gault and relying on a similar line of New York authorities and the breadth of the Family Court Act,

have held that indigent children pressing claims in Family Court which implicate the child's liberty interest, such as allegations of child abuse, are entitled to meaningful and effective legal representation by assigned counsel. See In re Dwayne G., ___ A.D.2d ___, 695 N.Y.S.2d 293 (2d Dep't 1999); In re Jamie TT, 191 A.D.2d 132, 599 N.Y.S.2d 892 (3d Dep't 1993).

28. The Family Court Act also extends the right to assigned counsel to adults appearing in certain Family Court proceedings. Today, indigent adults are entitled to assigned counsel in a wide range of cases including abuse and neglect, family offense, and child custody proceedings. See N.Y. Fam. Ct. Act § 262 (McKinney 1998). The United States Supreme Court has held that an indigent adult's right to meaningful and effective legal representation in child custody proceedings, among others, implicates due process concerns of constitutional dimension. See Lassiter v. Department of Soc. Servs., 452 U.S. 18 (1981).

29. Both law guardians for children and assigned private counsel for indigent adults in Family Court are appointed from the Family Court Panel and, as noted, compensated at the same rates as private counsel appointed from the Criminal Court Panel pursuant to Article 18-B of the County Law.

30. New York State law also provides a more expansive right to assigned counsel in criminal cases. More than eighty years before the United States Supreme Court decided Gideon v. Wainwright, which established an indigent criminal defendant's right under the federal constitution to assigned counsel in felony cases, New York State law recognized the right of children and indigent adults charged with serious crimes to

have counsel appointed. In 1881, the Legislature adopted § 308 of the Criminal Procedure Law, directing courts to appoint private counsel on a pro bono basis for unrepresented defendants responding to an indictment.

31. In 1961, the Legislature amended § 224(10) of the County Law to authorize local governments to appropriate their own funds to contract with private entities for the provision of free legal services to children and indigent adults. New York City used this newly obtained power to fund the Legal Aid Society.

32. Two years later, the United States Supreme Court handed down its decision in Gideon v. Wainwright, 372 U.S. 335 (1963), holding that the Sixth and Fourteenth Amendments to the United States Constitution require the States to provide adequate legal representation to children and indigent adults charged with felonies. The Gideon Court opined that:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

Id. at 344.

33. That same year, the United States Supreme Court held in Douglas v. California, 372 U.S. 353 (1963), that the federal constitution also requires the States to provide indigent defendants in all criminal cases with appointed counsel in their first appeal as of right. As the Court later clarified, this right to assigned counsel on appeal comprehends the right to meaningful and effective assistance of appellate counsel. See Evitts v. Lucey, 469 U.S. 387 (1985).

34. Less than two years later, the New York State Court of Appeals further expanded the rights of indigent adults charged with crimes. In People v. Witek, 15 N.Y.2d 392, 259 N.Y.S.2d 413 (1965), the Court held that indigent defendants in all criminal cases, and not merely felony prosecutions, are entitled to have counsel appointed to represent them. The Witek Court observed that the “right and the duty of our courts, to assign counsel for the defense of destitute persons, indicted for crime, has been, by long and uniform practice, as firmly incorporated into the law of the State, as if it were made imperative by express enactment.” Id. at 397 (internal quotation omitted). The Court noted also that in New York State “the right of counsel must be made ‘meaningful and effective’ in criminal courts on every level.” Id. at 395.

35. Later that same year, the New York Court of Appeals held in People v. Hughes, 15 N.Y.2d 172, 256 N.Y.S.2d 803 (1965), that an indigent defendant “who is by statute accorded an absolute right to appeal . . . is entitled to the assignment of counsel to represent him on such appeal if he so requests.” It is equally well established that this right requires the effective assistance of assigned appellate counsel. See People v. Gonzalez, 47 N.Y.2d 606, 419 N.Y.S.2d 913 (1979).

36. Accordingly, New York State is constitutionally and statutorily obligated to provide meaningful and effective legal representation for indigent adults in abuse and neglect, family offense, and child custody proceedings in Family Court, for children in all Family Court matters where the child is the subject of the proceeding, delinquency is at issue, or the child’s liberty interests are otherwise implicated, and for all children and indigent adults in criminal court proceedings.

B. New York State's Assigned Counsel Program in New York City Family, Supreme, and Criminal Courts

37. In 1974, the Legislature amended the Family Court Act requiring the various Appellate Divisions to designate panels of assigned private counsel and law guardians to represent indigent adults and children, respectively, in Family Court proceedings. Pursuant to that law, the First and Second Departments established Family Court Panels to provide assigned private counsel for children and indigent adults entitled to representation in Family Court in New York City. Law guardians for children and assigned private counsel for indigent adults in Family Court matters are paid at rates set by § 245 of the Family Court Act and § 35 of the Judiciary Law.

38. In 1965, the Legislature adopted Article 18-B of the County Law requiring the various local governments to establish a plan to provide indigent criminal defendants with adequate legal representation. Prior to that date, New York State relied almost exclusively on private attorneys to represent children and indigent adults on a pro bono basis. While the Legislature debated passage of Article 18-B, the New York State Bar Association (“NYSBA”) issued a report concluding that the immense burden of representing all children and indigent adults required to be represented by assigned counsel in criminal trial and appellate proceedings could not be met by private attorneys working on a pro bono basis. Instead, the NYSBA report recommended that “[l]awyers who are assigned to represent indigents should be compensated sufficiently to permit them to devote the time, care and patience to the preparation and disposition of the case which are necessary to meaningful exercise of the right to counsel.” Comm. on State Legis., NYSBA Report No. 48, at 2 (1965).

39. Article 18-B requires local governments to implement their own systems for providing adequate legal representation for children and indigent adults charged with crimes. Article 18-B offers local governments four options in terms of establishing an indigent defense system, including a “mixed” system in which the locality engages both a public defender agency such as the Legal Aid Society and a panel of private counsel under a bar association plan to provide representation in criminal matters.

40. In November 1965, New York City Mayor Robert F. Wagner signed Executive Order No. 178, designating the Legal Aid Society as the provider of legal representation to children and indigent adults under Article 18-B, and calling for the establishment of an Assigned Counsel Plan. The Plan, originally co-sponsored by NYCLA and the City Bar Association, established the Criminal Panel from which private counsel would be appointed to represent indigent defendants in criminal matters. The Plan, which took effect in 1966 following approval by the State Judicial Conference, has governed representation of children and indigent adults by assigned private counsel in criminal cases brought in Bronx and New York Counties ever since. The Second Department has a similar Assigned Counsel Plan governing the representation of indigent criminal defendants by assigned private counsel in Kings, Queens, and Richmond Counties.

41. The Legislature last increased the rates set forth in § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law in 1986. Under the current structure, assigned private counsel receive \$25 per hour for work outside court and \$40 per hour for in-court work. The rate for appellate work in criminal cases was

fixed at \$40 per hour. The current structure also includes caps of \$800 for misdemeanor cases and Family Court matters, and \$1,200 for felony cases and all appellate matters. As noted, exceptions to the rates and caps listed above may be made only in “extraordinary circumstances” upon application to the court. The express language of these provisions also makes plain that local governments are prohibited from paying assigned private counsel higher rates than those set forth in the statutes.

42. The rates assigned private counsel are entitled to receive and the caps on total compensation have not been changed since 1986.

43. On January 10, 2000, Chief Judge Kaye recommended in her annual State of the Judiciary Address that assigned private counsel rates be increased to guarantee that indigent men, women, and children receive meaningful and effective legal representation. Chief Judge Kaye proposed increasing the rates to \$75 per hour for Family Court and felony matters and \$60 per hour for misdemeanor cases, abolishing the arbitrary distinction between the rates paid for in-court and out-of-court work, removing the caps on total compensation, and establishing a commission to review the rates periodically and recommend future adjustments as needed.

44. Despite repeated calls by Chief Judge Kaye and others for an increase in assigned counsel rates and removal of the caps, Defendant Pataki steadfastly refuses to raise these rates. In fact, on January 11, 2000, one day after hearing Chief Judge Kaye’s proposal, Defendant Pataki confirmed during a press conference his intention not to raise assigned counsel rates.

C. The Assigned Private Counsel Crisis in New York City Family, Supreme, and Criminal Courts

45. The rates and caps mandated by § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law, and stubbornly adhered to by Defendants, are directly responsible for the serious systemic deficiencies that have developed in the provision of legal representation by assigned private counsel to children and indigent adults in New York City. Because the current scheme provides “woefully inadequate” compensation to assigned counsel, the number of attorneys actively participating in the Criminal Panel has plummeted in the last ten years, while the number of attorneys actively taking cases from the Family Court Panel has decreased as well. Yet, the number of children and indigent adults in New York City who depend upon representation by assigned private counsel in family and criminal court matters has risen dramatically during the same period.

46. As a result, the attorneys who still participate in the Family and Criminal Court Panels handle caseloads that are far too burdensome to allow them to provide meaningful and adequate representation to each of their many clients. This situation has created a severe and unacceptably high risk that private counsel assigned to represent indigent children and adults in family and criminal court proceedings will be unable to provide an adequate level of representation as required by the New York and United States Constitutions.

47. On January 10, 2000, OCA released its Report on the growing crisis of assigned private counsel representation in New York State. The Report confirms that the combination of a rising number of children and indigent adults entitled to representation and a decreasing number of attorneys actively taking assignments from the Family and

Criminal Court Panels has created a situation in which “a dramatically smaller number of attorneys – who are often far less experienced – [are handling] a significantly larger number of cases.” Report at 13. The Report states that these increased caseloads are “causing major disruptions in the processing of cases, in both the Criminal Courts and Family Court.” Id.

48. Excessive caseloads and inadequate funding unacceptably risk the quality of legal representation assigned private counsel are able to provide to their indigent clients, thereby risking serious and irreparable injury to those clients at each stage of the particular family or criminal court proceeding at issue. Excessive caseloads may prevent assigned private counsel from performing basic pre-trial or pre-hearing tasks that are both necessary and fundamental to the provision of meaningful and effective legal representation. These tasks include, but are not limited to, the following: meeting, interviewing, and counseling their clients; conveying basic information to their clients about the nature and purpose of upcoming court proceedings; spending adequate time reviewing their clients’ files; conducting necessary legal and factual research; preparing witnesses to testify; filing evidentiary and procedural motions; and otherwise preparing their case for trial.

49. The severe and increasing shortage of qualified assigned private counsel actively participating in the Family and Criminal Court Panels also has caused serious delays in court proceedings. With regard to Family Court, the Report finds that “[b]ecause of the greatly increased volume of cases that individual assigned counsel handle, they [assigned private counsel] are increasingly absent, late or unprepared for

routine court appearances and hearings.” Report at 16. “The scarcity of assigned counsel has resulted in attorneys not always being assigned to represent indigent parties in family offense proceedings.” Id. According to Family Court officials in New York City, up to fifty indigent parents are sent home each week because assigned private counsel cannot be found to represent them. See David Rohde, “Critical Shortage of Lawyers for Poor Seen,” N.Y. Times, Dec. 12, 1999, at B55.

50. Court statistics bear out this trend in Family Court in New York City. From 1989 to 1999, the demand for assigned private counsel for adults and law guardians for children increased as Family Court filings in New York City rose more than 30% from approximately 175,000 to 225,000. Yet, during the same period the number of attorneys on the Family Court Panel in the First Department actively taking assignments decreased by at least 10% from 109 to less than 100.

51. According to the Report, the plight of indigent adults charged with crimes is no better. “Trials in serious cases involving charges such as murder, rape and robbery are repeatedly delayed because overloaded assigned counsel are often on trial in other cases on virtually a continual basis.” Report at 14. For example, in a murder case that has been pending in Bronx Supreme Court for almost three years, the trial has been delayed for months because the assigned private counsel, who is simultaneously handling nearly fifty assigned counsel cases, has been continuously on trial in other criminal cases to which he is also assigned. Id.

52. Specifically, the number of attorneys on the Criminal Panel who actively accepted assigned cases in the First Department decreased by more than 60% from 1030

to 400 between 1989 and 1999. Yet, in Bronx and New York Counties, the total number of criminal cases in which the defendant was indigent has also increased by 18.3% from approximately 84,500 to 100,000 since 1989. The increased demand for indigent representation during this period was driven by the number of arrest case filings in New York City, which increased 15.2% from approximately 375,000 to 425,000.

53. A NYCLA survey of criminal defense attorneys who actively participate in the federal assigned counsel program in the United States District Courts for the Southern and Eastern Districts of New York conducted in 1997 revealed that 75% of the attorneys had reduced their state court criminal caseload after qualifying for the federal program. The federal program compensates assigned private counsel at a rate of \$75 per hour for both in-court and out-of-court work. Tellingly, the survey revealed also that 97% of these lawyers would increase the number of state criminal cases they handle, or resume handling state cases if they had previously stopped doing so, if the hourly rates were increased to match the federal rate.

54. Actual state criminal caseload statistics from the Criminal Panel confirm that a “mass exodus” has occurred in recent years due to the exceedingly low rates and caps on total compensation for assigned private counsel. For example, in New York County, approximately 62% of the attorneys on the Criminal Panel who are qualified to handle homicide cases took no new assigned homicide cases during either 1998 or 1999. Similarly, approximately 32% and 52% of the attorneys qualified to handle felony and misdemeanor cases, respectively, took no new assigned cases during that same period. Caseload statistics also reveal that fewer than 30% of the total number of attorneys

qualified to represent defendants in homicide and felony cases handled more than 90% of the total assigned homicide and felony cases in both 1998 and 1999. In addition, fewer than 20% of the attorneys qualified to represent defendants in misdemeanor cases handled more than 90% of the total assigned misdemeanor cases.

55. Indeed, in New York County, for example, 18 attorneys had 150 or more felony cases, and 9 attorneys had 300 or more misdemeanors assigned to them during 1998. That same year, one attorney in Manhattan had 546 misdemeanors and 12 felonies assigned to him during the year, while another had 228 felonies and 107 misdemeanors assigned to her. Caseload statistics such as these reveal that an ever smaller and overburdened group of private attorneys have been handling nearly all of the felony, homicide, and misdemeanor cases filed in the First Department in recent years. This trend carries with it unacceptably high risks of severe and irreparable harm to the indigent clients these attorneys represent, to the court system, and to the public.

56. By failing to raise the rates and remove the caps, Defendants have allowed the system of indigent representation in New York City to deteriorate to a point where it subjects men, women, and children to a severe and unacceptably high risk that private counsel assigned to represent them in family and criminal court proceedings will be unable to provide meaningful and effective legal representation as required by the New York and United States Constitutions. Defendants' refusal to act to protect the constitutional rights of children and indigent adults has placed the entire system on the brink of collapse, thereby creating an imminent threat of widespread violations of their rights to counsel and to due process of law.

D. Conduct of Assigned Private Counsel Violates
Prevailing Standards of Professional Conduct
Concerning Representation of Children and
Indigent Adults

57. Due to the systemic deficiencies caused by the grossly inadequate compensation provided to assigned private counsel and excessive caseloads, the New York City indigent representation system functions without regard for, and in violation of, constitutional and statutory mandates, the New York Code of Professional Responsibility, and accepted national and local minimum standards for meaningful and effective assistance of counsel, proper attorney training, attorney workloads, and adequate resources. Those standards include, but are not limited to, those promulgated or endorsed by the American Bar Association (“ABA”), the NYSBA, the National Legal Aid and Defender Association (“NLADA”), the National Study Commission on Defense Services, the National Advisory Commission on Criminal Justice Standards and Goals, and the Indigent Defense Organization Oversight Committee.

58. The ABA’s Standards for Criminal Justice (“ABA Standards”) recommend that “[d]efense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client’s interest in the speedy disposition of charges, or may lead to the breach of professional obligations.” Standard 4-1.3(e) (3d ed. 1993). With regard to case preparation, the ABA recommends that defense counsel “conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction,” including interviewing the accused “[a]s soon as practicable.” Id. Standards 4-4.1; 4-3.2.

59. The ABA Standards similarly prohibit assigned counsel from “accepting workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.” Standard 5-5.3(a) (3d ed. 1992). Tellingly, the ABA also endorses fully the view that assigned private counsel should “receive prompt compensation at a reasonable hourly rate and should be reimbursed for their reasonable out-of-pocket expenses” and assigned counsel “be compensated for all hours necessary to provide quality legal representation” Id. Standard 5-2.4.

60. In 1996, the NYSBA issued Law Guardian Representation Standards governing the representation of children in family court matters. In juvenile delinquency proceedings, NYSBA norms require the law guardian to “interview the child to ascertain the detailed facts concerning the crime charged and the facts surrounding the child’s arrest and questioning” as soon as possible, and to refrain from “[r]eliance on court house interviews within hours or even minutes before the first judicial hearings [because it] renders virtually impossible the investigation or motions on which adequate representation often turns.” Standard A-1 & commentary (1996). NYSBA standards also require that the “full range of appropriate pre-trial motions (e.g. discovery, suppression, inspection, Wade, Huntley) should be carefully considered and, when relevant, filed on a timely basis.” Id. Standard D-6.

61. In abuse and neglect proceedings, NYSBA Standards B-4 and B-5 require a law guardian to obtain “every possibly relevant document, photograph, record and other relevant evidence from the county Department of Social Services or other petitioner” and,

where appropriate, subpoena “every possibly relevant record, photograph or other evidence in the possession of a hospital or a private or public agency.” Id. In the course of his or her representation, the law guardian also “should consider visiting the parental home and, if relevant, the foster home; the parents should again be interviewed . . . [and] [p]arental visitation should be evaluated and, if possible, observed.” Id. Standard D-4. In addition, “[e]very relevant report and record should be reviewed, including school records, court ordered evaluations and the records of any supportive or rehabilitative program; every appropriate party or official should be consulted.” Id. Standard D-5. The purpose of Standards D-4 and D-5 is “to encourage a thorough preparation for the dispositional stage of the proceedings.” Id. Standards D-4, D-5, commentary.

62. Performance Guidelines for Criminal Defense Representation issued by the NLADA require that “[b]efore agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that they have available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter.” Guideline 1.3 (1997). NLADA Standards for the Administration of Assigned Counsel Systems also mandate that “[a]ssigned counsel shall provide to their clients quality representation equivalent to that provided by a skilled, knowledgeable and conscientious criminal defense lawyer to paying clients.” Standard 2.1 (1989).

63. The New York Code of Professional Responsibility (the “Code”) prohibits any attorney from handling “a legal matter without preparation adequate in the circumstances.” DR 6-101(A) (1999). The Code provides further that a lawyer “shall not accept or continue employment if the exercise of professional judgment on behalf of the

client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests" DR 5-101(A).

64. The current compensation scheme has fostered an unacceptable tension between adherence to the above professional standards and obligations and the responsibility of private attorneys on the Family and Criminal Court Panels to provide representation for all children and indigent adults in New York City entitled to such representation. A direct result of the declining numbers of attorneys who are willing and able to handle assigned matters, has been the burgeoning of the caseloads of those panel attorneys who remain active. At the same time, Panel Administrators have issued urgent appeals to active panel members to take on additional cases and arraignment shifts.

65. Most recently, on February 1, 1999, George Golfinopoulos, the Criminal Panel Administrator for the First Department, wrote to all panel members urging them to take on additional arraignment shifts. Mr. Golfinopoulos indicated that, "[b]ecause of fewer volunteers, we have been unable to provide full coverage at all arraignment parts" and that if voluntary participation did not increase, "a mandatory system would have to be implemented." Mr. Golfinopoulos' letter demonstrates that the inadequate compensation scheme for assigned private counsel has created a vicious cycle in which ever declining numbers of attorneys actively taking assigned cases are compelled to take on even more cases to meet the continuing demand.

E. It Is Widely Recognized That the Rates Fixed by §§ 722-b, 245, and 35 Create a Serious and Unacceptably High Risk of Inadequate Representation by Assigned Private Counsel

66. Key Judiciary and Executive Branch officials charged with overseeing the administration of justice in the State, County, and City of New York have expressed concern publicly that the rates and caps fixed by § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law create a serious and unacceptably high risk of inadequate representation by private counsel in family and criminal court proceedings at the trial and appellate levels. These public officials also recognize that inadequate representation in these proceedings has the potential to work severe and irreparable harm and injustice to indigent men, women, and children.

67. Chief Judge Kaye has stated publicly that “a bedrock component of our State’s commitment to equal access to justice is the availability of qualified assigned counsel to represent indigent litigants in criminal and Family Court matters. Unfortunately, our ability to honor that commitment is at risk.” Hon. Judith S. Kaye, New York State of the Judiciary Address, Jan. 10, 2000. Chief Judge Kaye has also stated that “[w]e don’t just want to process cases, we want justice done. And a well-functioning system of assigned counsel is essential to that goal.” Gary Spencer, “Proposal to Boost 18B Fees Gains Broad-Based Support,” N.Y.L.J., June 3, 1999, at 1.

68. Chief Administrative Judge Jonathan Lippman has stated publicly that because of the current rate structure “the quality of representation has clearly suffered and the system is at a point of breakdown.” Emi Endo, “Attorney Shortage? Call to Raise Court-Appointed Fees?,” N.Y. Newsday, June 3, 1999, at A43. Chief Administrative Judge Lippman also has echoed Chief Judge Kaye’s sentiments that this represents “a

deplorable situation for a state with a longstanding commitment to providing its citizens equal access to justice.” Report at 1.

69. Deputy Chief Administrative Judge Juanita Bing Newton sent a letter to Defendant Pataki on December 18, 1997, on behalf of the Judges and Justices of the New York County Supreme Court, Criminal Term, in which she called the current rates “outdated” and “unfair,” and noted that “[i]t will become increasingly difficult to realize a continuation of the high quality of justice we currently enjoy if steps are not taken to increase the rates paid assigned counsel.”

70. Administrative Judge for the Twelfth Judicial District Burton B. Roberts sent a letter to Defendant Pataki on November 24, 1997, in which he called the current rates “an affront and beneath the dignity and vision of New York, which has always been renowned for being in the forefront of providing competent representation for defendants who are indigent.” Administrative Judge Roberts enclosed with his letter a petition signed by all fifty Justices and Judges of the Supreme Court, Civil and Criminal Branches, of the Twelfth Judicial District, recommending that the rates be increased and that the distinction between the rates paid for in-court and out-of-court work be abolished.

71. Kings County Supreme Court Justice Carolyn E. Demarest sent a letter to Defendant Pataki on May 30, 1997, in which she stated that “[b]ecause so few attorneys are able or willing to accept the minimal compensation” provided to participants in the assigned counsel program, “those few who are willing to accept these assignments have so many cases that they are often over-extended and unable to devote the time necessary to properly represent all of their clients.” Justice Demarest continued: “Scheduling

conflicts frequently require lengthy adjournments, occasionally resulting in the loss of critical evidence.” Justice Demarest enclosed with her letter a petition signed by eighty-nine of her colleagues on the Bench in Kings County recommending that the rates be increased and that the distinction between the rates paid for in-court and out-of-court work be abolished.

72. Manhattan District Attorney Robert M. Morgenthau has expressed concern that the rates and caps threaten the fairness of the criminal judicial system. In a letter to Defendant Pataki dated July 17, 1997, Mr. Morgenthau wrote: “It is essential that defendants are represented by competent counsel if our criminal courts are to operate efficiently and fairly. The present level of compensation [for assigned counsel] makes it less likely that qualified counsel will undertake court appointments to represent poor defendants.”

73. New York City Criminal Justice Coordinator Steven M. Fishner testified on January 24, 2000, before the City Council that Mayor Rudolph W. Guiliani supports Chief Judge Kaye’s proposal to increase the rates paid to assigned private counsel. Fishner testified that the “current challenge facing the Assigned Counsel Plan is maintaining a sufficient number of attorneys” given the “simply inadequate” rates paid to them. Fishner noted that the “[r]esolutions of criminal cases where the defendant is represented by assigned counsel are often delayed because attorneys are tied up on their other assigned counsel cases” and that in Family Court, “judges must sometimes adjourn cases in the intake part to later dates because there are not 18-B attorneys available to handle them.”

F. New York State Compensates Assigned Private Counsel for Children and Indigent Adults at Lower Rates Than All Other States, the District of Columbia, and the Federal Government

74. All fifty states and the District of Columbia have a system in place designed to satisfy the requirement to provide legal representation to indigent criminal defendants. Many states, like New York, rely on panels of private attorneys to handle at least some of these cases.

75. Except for New Jersey, which relies primarily upon a public defender to represent indigent criminal defendants, the rates of compensation paid by New York State to assigned private counsel are the lowest in the United States. See Report at 6. Indeed, Alabama, Arkansas, Georgia, Louisiana, West Virginia, and several other states with significantly lower costs-of-living pay higher rates than New York. See id. Specifically, Alabama pays \$50 per hour for in-court work and \$30 per hour for out-of-court work; Arkansas pays an average of \$80-\$85 per hour; Georgia pays \$60 per hour for in-court work and \$45 per hour for out-of-court work; Louisiana pays an average of \$42 per hour; and West Virginia pays \$65 per hour for in-court work and \$45 per hour for out-of-court work. Id. at 6 & n.16.

76. New York State's rates also are significantly lower than those paid to assigned private counsel by the federal government. As noted, in the United States District Courts for the Southern and Eastern Districts of New York, assigned private counsel receive \$75 per hour for time spent in and out of court. This is almost twice the rate paid by New York State for in-court time, and three times the rate paid for out-of-court time. Moreover, counsel on the federal panel are permitted to receive up to \$3,500

for felony cases and \$1,000 for misdemeanor cases, and according to the Spangenberg Group, a noted criminal justice consultancy, the actual award of fees in federal court exceeds the stated federal felony maximum in approximately 75% of all cases.

77. New York State's rank as 49th in the nation is particularly egregious in light of the fact that New York is one of the most expensive states in the United States in terms of the costs of living and maintaining a business. According to a 1997 NYSBA study of the economics of law practice in New York cited in the Report, "individual overhead costs for a single attorney in a law firm of five or fewer attorneys – the typical arrangement in which attorneys who handle assigned counsel work practice – averaged approximately \$55,000 [annually]" in 1995. Report at 8. Adjusting that amount upward by 15% to estimate today's costs, average yearly overhead costs for an attorney practicing in 2000 are approximately \$63,250 per year. See id. Based on a 35-hour work week, the corresponding average hourly overhead cost is \$34.75. See id. Thus, an attorney with average overhead expenses who performs assigned counsel work actually loses \$9.75 for each hour of out-of-court representation performed and earns only \$5.75 for each hour of in court work before income taxes are deducted. See id. And because the above analysis was based on state-wide averages, attorneys who perform assigned counsel work in New York City lose an even greater amount for out-of-court work and undoubtedly lose money for in-court work as well because of the significantly higher than average costs of living and maintaining a business here. See id.

G. New York State Compensates Assigned Private Counsel for Children and Indigent Adults at Far Lower Rates Than Private Counsel Retained by the State and City for All Other Purposes

78. The inadequacy of the rates paid to assigned private counsel for children and indigent adults in New York State is even more apparent when compared to the compensation paid to private attorneys by State and local governments for other types of legal work. See Report at 6-7. For example:

- New York City pays private bond counsel \$150 an hour for work done by partners and \$100 an hour for work by associates. The rates are even higher for work done on tax anticipation notes;
- The Metropolitan Transportation Authority pays private counsel more than \$250 per hour;
- The New York City Education Construction Fund pays private counsel an average hourly rate of \$325;
- The New York State Dormitory Authority pays private counsel from \$175-\$300 per hour, depending on experience;
- New York State pays private counsel \$125 and \$75 per hour for the lead and secondary attorney, respectively, in capital cases.

79. In addition to the markedly higher hourly rates paid to private counsel retained for these types of legal work, the amount of compensation provided to them is subject neither to caps nor arbitrary distinctions between in-court and out-of-court work. Yet, just as it is important for the Metropolitan Transit Authority to have qualified private counsel represent its interests, children and indigent adults deserve to be provided with a high level of representation when their welfare and liberty are being determined in family and criminal court proceedings. The current compensation scheme for participants in the assigned counsel program creates a severe and unacceptably high risk that qualified private counsel will not be available or able to provide meaningful representation to their clients as required by the New York and United States Constitutions.

H. New York State Compensates Assigned Private Counsel for Children and Indigent Adults at Far Lower Rates Than Physicians, Social Workers, and Other Court-Appointed Experts

80. The rates of compensation provided to court-appointed experts greatly exceed the rates paid to assigned private counsel. Section 722-c of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law all provide that court-appointed experts such as physicians and social workers be made available to children and indigent adults in family and criminal court proceedings. However, unlike assigned private counsel, these provisions fail to set the rate at which court-appointed experts shall be compensated.

81. For many years, judges in family and criminal court proceedings limited compensation for court-appointed experts to the hourly rates paid to assigned private counsel. However, it soon became clear that the rates of \$25 per hour for out-of-court work and \$40 per hour for in-court work were far too low to attract a sufficient number of qualified physicians, social workers, and other professionals. Recognizing that these rates effectively limited the access of children and indigent adults to their constitutional and statutory rights to the assistance of qualified professionals, the Chief Administrator of the Unified Court System issued an Order recommending a compensation scheme for court-appointed experts as follows: physicians receive \$200 per hour; psychiatrists receive \$125 per hour; certified psychologists receive \$90 per hour; and certified social workers receive \$45 per hour. See Admin. Order of Chief Administrator of the Unified Court System, Feb. 6, 1992, at 1. The Chief Administrator also recommends that

licensed investigators receive \$32 per hour, a higher hourly rate than assigned private counsel receive for out-of-court work. See id.

82. The Chief Administrator's actions reflect a recognition on the part of the court system that children and indigent adults in family or criminal court proceedings can expect to receive meaningful and effective assistance by qualified physicians, social workers, and other court-appointed experts if and only if those professionals are compensated for their services paid at market rates. It is equally true that children and indigent adults can expect to receive meaningful and effective legal representation if and only if assigned private counsel are also compensated at market rates.

CLAIMS

First Cause of Action

(Violation of Article I, § 6 of the New York Constitution)

83. NYCLA repeats and realleges paragraphs 1 through 82 above.

84. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Supreme Court and Family Court in New York City, thereby creating a severe and unacceptably high risk that children in proceedings implicating their liberty interests will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of Article I, § 6 of the New York Constitution.

Second Cause of Action

(Violation of Fourteenth Amendment to the United States Constitution)

85. NYCLA repeats and realleges paragraphs 1 through 84 above.

86. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Supreme Court and Family Court in New York City, thereby creating a severe and unacceptably high risk that children in proceedings implicating their liberty interests will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of the Fourteenth Amendment of the United States Constitution.

Third Cause of Action

(Violation of Article I, § 6 of the New York Constitution)

87. NYCLA repeats and realleges paragraphs 1 through 86 above.

88. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Supreme Court and

Family Court in New York City, thereby creating a severe and unacceptably high risk that indigent adults will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of Article I, § 6 of the New York Constitution.

Fourth Cause of Action

(Violation of Fourteenth Amendment to the United States Constitution)

89. NYCLA repeats and realleges paragraphs 1 through 88 above.

90. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Supreme Court and Family Court in New York City, thereby creating a severe and unacceptably high risk that indigent adults will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Fifth Cause of Action

(Violation of Article I, § 6 of the New York Constitution)

91. NYCLA repeats and realleges paragraphs 1 through 90 above.

92. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Family Court in New York City, thereby creating a severe and unacceptably high risk that juveniles in delinquency proceedings will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of Article I, § 6 of the New York Constitution.

Sixth Cause of Action

(Violation of Sixth and Fourteenth Amendment to the United States Constitution)

93. NYCLA repeats and realleges paragraphs 1 through 92 above.

94. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system in Family Court in New York City, thereby creating a severe and unacceptably high risk that juveniles in delinquency proceedings will be denied their rights to meaningful and effective assistance of counsel and to due process of law in violation of the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Seventh Cause of Action

(Violation of Article I, §§ 5 & 6 of the New York Constitution)

95. NYCLA repeats and realleges paragraphs 1 through 94 above.

96. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system governing representation in criminal court proceedings at the trial and appellate levels in New York City, thereby creating a severe and unacceptably high risk that indigent criminal defendants will be denied their rights to meaningful and effective assistance of counsel at critical stages of the criminal process, to bail, and to due process of law in violation of Article I, §§ 5 & 6 of the New York Constitution.

Eighth Cause of Action

(Violation of Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 1983)

97. NYCLA repeats and realleges paragraphs 1 through 96 above.

98. Defendants' failure to provide sufficient compensation to private counsel has caused systemic deficiencies in the assigned counsel system governing representation in criminal court proceedings at the trial and appellate levels in New York City, thereby creating a severe and unacceptably high risk that indigent criminal defendants will be denied their rights to meaningful and effective assistance of counsel at critical stages of the criminal process, to bail, and to due process of law of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

Ninth Cause of Action

(Violation of New York Common Law, Tortious Interference)

99. NYCLA repeats and realleges paragraphs 1 through 98 above.

100. The Plan obligates NYCLA to prepare and certify to the Criminal Panel Administrator a list of attorneys who are competent to provide meaningful and effective legal representation as assigned private counsel to indigent criminal defendants in New York City Supreme and Criminal Courts pursuant to Article 18-B of the County Law. Defendants are aware that the Plan imposes this continuing obligation upon NYCLA; indeed, the Legislature specifically endorsed the imposition of this obligation upon NYCLA and the other bar associations when it passed Article 18-B in 1965. Defendants' intentional and persistent failure to provide sufficient compensation to assigned private counsel has caused a severe shortage of attorneys willing and able to serve to on the Criminal Panel, thereby tortiously interfering with NYCLA's continuing obligation to

prepare and certify a list of attorneys who are competent to provide meaningful and effective representation to children and indigent adults in New York City Supreme and Criminal Court proceedings in violation of New York common law.

WHEREFORE, NYCLA respectfully requests the following relief:

- (a) a declaratory judgment that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children and indigent adults in New York City;
- (b) a declaratory judgment that Defendants' failure to increase the rates paid to assigned private counsel, to abolish the arbitrary distinction between the rates paid for in-court and out-of-court work, and to remove the caps on total compensation per case has created a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions;
- (c) a declaratory judgment that those portions of § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law fixing these rates and limits are unconstitutional as applied to the representation of children and indigent adults in New York City;
- (d) a declaratory judgment that Defendants' intentional and persistent failure to provide sufficient compensation to assigned private counsel tortiously interferes with NYCLA's obligation under the assigned counsel program

to provide a list of attorneys competent to give meaningful and effective representation to children and indigent adults in violation of New York common law;

- (e) an injunction setting new rates, abolishing the distinction between the rates paid for in-court and out-of-court work, and removing the current limits on compensation for private counsel who participate in the assigned counsel program. The new rates shall be set both preliminarily and permanently at a level sufficient to ensure that qualified private counsel are available and able to provide children and indigent adults in New York City with constitutionally adequate representation in family and criminal court proceedings at the trial and appellate levels;
- (f) an injunction barring Defendants from any future interference with the performance of NYCLA's obligations under the assigned counsel program;
- (g) an award of attorney's fees, costs and disbursements accrued in pursuit of this action under 42 U.S.C. § 1988 and CPLR Article 86; and
- (h) such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 18, 2000

DAVIS POLK & WARDWELL

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