

## **The Divorce Industry – The Shame of New York**

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### **What's Wrong With This Picture?**

August 2011 - A stay at home father of two loses complete access to his children including texting, email, family events and visits in a 'trial' where he couldn't afford representation. While his spouse spent over \$400,000 from \$2 million of assets omitted from the sworn Statement of Networth (SNW), the father depleted all his assets and family goodwill and was forced to certain defeat as pro se. Though the father has never been accused or convicted of any crimes heresay evidence is used to ban the father from his children.

A Westchester father is banned from all contact with his young children as his wife spends over \$1,000,000 for sole custody. Though the SNW doesn't reveal wealth to pay these astronomical legal bills the Judge allows the case to continue, turning his head to the source of the money. Years later the mother is arrested for embezzling millions of dollars from her employer and the source of her endless legal funds is now clear along with other incongruous assets. By turning a blind eye to the source of substantial sums of money the Judge allowed a major criminal enterprise to operate for many years and in the process, destroyed the emotional stability of innocent children caught in the middle.

A parent diligently supports his children but during the course of his divorce his business fails and he runs out of money. The mother finances a legal attack using over \$100,000 omitted from the SNW while the father is forced pro se. As pro se he is precluded from presenting evidence on finances months before a trial on finances while the Judge allows the wife's attorney, an old friend with forty years of experience in New York divorce courtrooms, to deliver discovery documents the second day of trial. During the action the court-appointed neutral forensic accountant appointed to evaluate the couples assets for the court is retained as expert witness for the mother and subsequently the fee to revalue the fathers failing

business increases from \$7,000 to \$25,000 in cash – an unobtainable sum. The Father is forced into an unfair trial as the Judge refuses to hold settlement conferences or enforce discovery demands prior to the trial. Banned from presenting evidence and stuck in a collusive courtroom with nowhere to turn for help the father is slapped with child support and alimony double his income, loses all of his assets and savings and is strapped with over \$125,000 of additional payments for a valueless business. After the Judge renders a decision a disciplinary complaint is filed against the experienced attorney for making material lies and misrepresentations during trial. Subsequently the Judge amends his initial decision based on an ex-parte faxed letter with no hearing or motion by either party, nearly doubling the amounts of the financial awards. Opposing counsel grossly misstated facts in his ex-parte letter, however, the Judge accepts his statements as fact without normal due process required to prove facts. Finally a generous lawyer friend who is tired of watching the kangaroo court steps up to help. After eight months, three motions and thousands spent on legal fees the errant judgment is corrected. Though the judge allowed illegal money to finance over \$200,000 in combined legal bills the net result leaves the mother on public assistance with college and retirement funds drained, family members tapped out of cash to support the lawyers and support and maintenance payments far exceeding the father's ability to pay. Complaints to the Grievance Committee, Administrative Judges, Attorney General and Office of Public Integrity are all rejected with no investigation.

A stay-at-home Mom in the Domestic Violence Unit of the Supreme Court is divorcing a well-financed professional who has been jailed for spousal abuse. The father has access to millions of dollars and spends over \$500,000 on his legal defense while the Judge forces the woman to match these fees, which is impossible. Eventually, she capitulates on custodial issues and also leaves large sums of money untouched because the Judge refuses to equalize the playing field. The debacle costs over \$700,000 in combined legal bills and leaves the children in the hands of a convicted abuser and the Mother with inadequate support from an extremely high earner.

Do these injustices stem from bias against fathers? Do these injustices stem from bias against 'greedy' women? We hear all the time that Fathers have no rights in divorce so it is certainly understandable to think that there is bias against men in the divorce industry. On the other hand, a notable Judge in Westchester County was removed from the bench after he spoke of the '10583 Syndrome' in a legal seminar. 10583 is the zip code of the wealthy community of Scarsdale and the Judge was referring to the relatively high divorce settlements that are typical of high net-worth families. However, based on my experience and research the root cause of the problems in New York Divorce resembles most government assisted fraud schemes - huge billings with no effective regulatory system.

Innocent victims stuck in a collusive divorce proceeding have nowhere to turn when they are being fleeced in an out-of-control rip off as no component of the system (lawyers, judges, referees and court-appointed experts) has any active supervisory bodies or enforceable procedural rules. Judge in New York Supreme Court can operate their court rooms however they like and court-ordered divorce professionals can set any fees they want with court backing, regardless of the ability of their customers to pay the bills. Supreme Court Judges are all too willing to sit idly as they let the divorce industry unjustly drain the financial resources of families beyond any reasonable limit. Victims of the divorce industry frequently face complete financial ruin or even worse, loss of children if one parent is significantly financially disadvantaged. Families stuck in contested divorce proceedings in New York face combined legal bills that can exceed \$500,000, much of which is spent on fax churn, status conferences, inadmissible communications and expensive forensic evaluations but once a court case begins there is no limit to what the divorce industry can take from a customer, with the court's muscle behind the bills.

The bottom line is that the Divorce Industry of New York has unfettered, court-backed access to the assets of innocent New Yorkers and with no enforced standards of conduct or limitation on fees, the results have been disastrous for families in New York.

## Fixing the System

The first step to fixing the Divorce Industry is to stop the flow of undeclared money into the Supreme Court system by requiring parties to declare the source of legal funds prior to commencement of an action. Similarly to how the down payment for a home is documented, payments to divorce lawyers and court appointed experts must come from documented sources. If litigants can afford to spend millions on legal fees, let them spend it, but why should ordinary New Yorkers be forced into paying sky high legal fees when they don't have the ability to pay? Why should a party declare poverty on their SNW while spending hundreds of thousands of dollars of undeclared money on a legal attack?

New York must end the *culture of dishonesty* that has taken root in the Supreme Court system by imposing harsh penalties for attorneys and litigants who lie on the SNW. Furthermore, the SNW must include easily obtainable independent asset reports such as international credit reports rather than forcing litigants to costly discovery quests to obtain easily available information. In an environment where court-ordered legal fees are typically \$350-600/hour per side and \$250/hour for court appointed legal guardians and forensics, certain assets must be put off limits to the Divorce Industry. There is no reason for the current system to stand that gives the divorce industry unfettered access to deplete retirement, custodial and college savings accounts to pay court-ordered fees. If there aren't enough liquid assets to cover estimated legal costs New York shouldn't be in the business of forcing irresponsible asset depletion to pay unreasonable legal fees.

Secondly, New York must respect the 14<sup>th</sup> amendment of the US Constitution and guarantee due process, especially when custody is in play. New York shouldn't be in the business of ripping children away from parents who can't afford counsel as is commonplace now. The 14<sup>th</sup> Amendment guarantees due process in civil proceedings but New York regularly violates the civil rights of those who can't afford representation.

Most importantly, New York State and hopefully the Federal Government must increase the ethical supervision of the industry as a whole because as we will see, the current regulatory system for the divorce industry is an absolute failure for New York families.

### **What's the problem?**

While there is much talk about the 'fault' system in divorce-reform discussion in New York, statistics from the New York Department of Health show<sup>1</sup> that 68% of the 49,418 divorces in New York in 2009 agreed on the generic 'constructive abandonment' fault, while another 20% divorced for cruelty. Only 6% of New York divorces ended after a one year separation and surprisingly, a mere .004% of divorcees, or 237, used the adultery fault in 2009. So while the New York Legislature seems largely focused on the fault statutes of New York, this issue is decided voluntarily in the vast majority of cases.

The problems of the Divorce Industry in New York must be looked at with fresh eyes as a consumer protection issue rather than mixing it with reform of NY State divorce laws. Families going through divorce are scared, stressed out and perhaps temporarily mentally incapacitated and as a result bad decisions are made. We are at our worst when going through divorce and New York State must do its fair share to protect vulnerable citizens from the predatory divorce industry in this difficult time.

### **License to Steal**

Through lax supervision New York State has given the Divorce Industry a license to steal. New York State Legislature has outsourced the ethical supervision of elected judges, lawyers and court-appointed experts to special discipline bodies that operate outside the jurisdiction of New York State and Federal law enforcement. Attorneys are disciplined by secretive Grievance Committees and Judges are disciplined by the opaque 'State Commission on Judicial Conduct'. There

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<sup>1</sup> [http://www.health.state.ny.us/nysdoh/vital\\_statistics/2009/table50.htm](http://www.health.state.ny.us/nysdoh/vital_statistics/2009/table50.htm)

is currently no professional oversight for court-appointed experts, court referees or legal secretaries in New York. New York State has created a safe haven for the divorce industry to operate by abdicating oversight of Judges and Lawyers to ineffective peer-discipline systems while completely overlooking important players in the divorce industry.

### **Who's Watching the Lawyers?**

Lawyers in New York are bound by the ethical code of the New York State Bar Association while the New York State taxpayer funded Attorney Grievance Committees are tasked with enforcing ethical violations of lawyers. The concept of taxpayer dollars being spent to enforce the rules of a private industry is troubling, but when you examine the ineptitude of the grievance committees it is no wonder while the culture of dishonesty is so persistent in the Supreme Court system. Publicly available statistics<sup>2</sup> on attorney discipline from the American Bar Association show that the secretive attorney grievance committees of New York prosecuted less than 1% of registered attorneys statewide in 2009 (1,933 out of 192,578 licensed attorneys). This number is skewed however because 82% of these convictions occur in Albany where 3.5% of attorneys have violated ethical statutes. However, in all other judicial districts in New York lawyers face less than half a percent chance of prosecution for an ethical violation.

In 2009 for example, the grievance committee of the 2<sup>nd</sup> Part, 9<sup>th</sup> District of New York prosecuted just 74 lawyers out of 1,194 complaints and 14,000 attorneys under supervision or about a half a percent. Even if a complaint is filed in this grievance committee nearly 50% of cases were summarily dropped (585 out of 1,194) without any investigation whatsoever. With such slim odds of ethical scrutiny a matrimony attorney is safe to ignore ethical codes without fear of prosecution.

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[http://www.americanbar.org/groups/professional\\_responsibility/resources/survey\\_lawyer\\_discipline\\_systems\\_2009.html](http://www.americanbar.org/groups/professional_responsibility/resources/survey_lawyer_discipline_systems_2009.html)

The proceedings of Grievance Committees are confidential and there is no transparency into the mechanics of an ethical investigation nor is there an appeals process. A complaint to the Grievance Committee is a blind process with no status updates, investigation details or meeting minutes of the secretive proceedings. It is impossible to know if a complaint received five minutes, five hours or five days of scrutiny, regardless of the severity of the accusation as the entire process is secretive. Once a finding is rendered there is no appeal process so any decision rendered by this opaque process is final.

Law enforcement officials in New York have no power to prosecute attorneys for ethical infractions unless a Grievance Committee recommends prosecution. According to Brian Mahoney, Director of Public Integrity for Westchester County DA Janet DiFiore “Attorneys can only be prosecuted for criminal offenses if the Grievance Committee recommends prosecution.” Even if an attorney violates criminal statutes in their dealings, lawyers are governed by a special set of rules that places their behavior outside of New York laws until a Grievance Committee decides an infraction merits discipline. To make matters worse, the Grievance Committees have no active investigative staff nor do they randomly monitor the activities of attorneys. The burden of proof in an ethical complaint is entirely on the victim as Grievance Committees lack the funding to adequately investigate claims.

One of the major problems with the New York State attorney discipline system, besides the fact that it’s grossly underfunded by the New York State Legislature, is that it treats all attorneys equally with no extra focus on troubled industry sectors. Certain areas of law are notorious for bad behavior and deserve more ethical scrutiny while many lawyers in New York don’t even practice law or have no access to the money that divorce lawyers have a free ride to take. Even if New York State Grievance Committees decided to crack down on divorce law, there is no funding for proactive supervision. New York is the last state besides CT to fund grievance committees solely through taxpayer funds and less than \$10million was appropriated to supervise over 194,000 lawyers in 2009. While most states have a combination of court fees, bar association fees and tax payer funding New

York lags the nation, placing the burden for disciplining this corrupt industry solely at the taxpayers expense. Sadly, states like California that spend over \$50 million, raised from court and bar association fees, do an equally poor job of policing lawyers. Certainly in New York we rely too heavily on the New York State Legislature for appropriated funds and this has proved to be a failed strategy.

My simple prescriptions for improving attorney discipline are to add transparency to disciplinary proceedings so that citizens can monitor proceedings and read and appeal the decisions. We must place extra scrutiny on the divorce industry with proactive investigations when ethics are in question. Attorneys who knowingly submit false and misleading documents should be immediately removed from cases and forced to pay back attorneys fees. Attorneys fees for divorce should be capped so that lawyers don't have the free ride to completely drain a clients financial resources - EVER.

### **Who's Watching Judges?**

If lawyers are the primary beneficiaries of the fraudulent divorce industry, elected Judges are the linchpins that keep it going. Judges of the New York Supreme Court System are blindly elected officials supervised by the ultra-secretive State Commission on Judicial Conduct. As with grievance committees, these double-secret committees offer no transparency or discernable standards of investigation. As the website for the New York State Commission on Judicial Conduct states, "The explicit mandates of Judiciary Law Sections 44(4) and 45 render most Commission records and proceedings confidential." With complete autonomy over how they conduct their courtrooms a collusive team of judge and attorney can create havoc in the lives of unwitting New Yorkers with no fear of scrutiny by outside regulators.

Even if there was transparency to the inner-workings of the Judicial Conduct Commission, the Commission is extremely limited in what areas of Judicial conduct they can enforce. The commission was clear in this position in a confidential letter to me stating that 'judges have tremendous leeway in how they conduct their courtrooms and the Commission has no control over this area.' In other words,

Judges can run their courtrooms however they see fit. While this philosophy may fit in criminal or tort courts, this free-for-all mentality has no place in divorce, when finances are tight, stakes are high, evidence standards are low, emotions are high and there is no guarantee of counsel for those who can't afford.

A citizen who lost everything in a collusive courtroom free of due process has no transparent method to report malfeasance to any disciplinary body nor is there any remedy for the pain and suffering that New York State causes families caught in this system. Even if a complaint is filed against a Judge the proceedings of the committee are secretive unless there is a finding of guilt. It is clear when reviewing the guilty verdicts on Commission's web site that beyond stealing money or accepting bribes, which should never be protected by a discipline committee in the first place, Judges are rarely found to have violated other ethical standards. Furthermore, there is no appeals process for a discipline hearing so unfair results will stand forever without explanation. With totally opaque proceedings, limited jurisdiction and no appeals process it is clear that the Commission on Judicial Conduct is not an effective deterrent of unethical behavior for Supreme Court Judges of New York.

Beyond the Commission on Judicial Conduct, Supreme Court Judges have another supposed level of supervision in the Office of the Administrative Judge. Incredibly, even the Chief Administrative Judge who is tasked to supervise Supreme Court courtrooms has no real supervisory authority over the judges in their district. I learned this during an exchange with Judge Alan Scheinkman's staff, Chief Administrative Judge of the 9<sup>th</sup> Judicial District.

When Judge Scheinkman was appointed to his position in Westchester County in 2009 one of his primary areas of focus was improving the matrimony court and to this point he wrote the 'WESTCHESTER SUPREME COURT MATRIMONIAL PART OPERATIONAL RULES EFFECTIVE FEBRUARY 1, 2010'. This guide documents the procedures of a matrimony proceeding in great detail and if followed, would improve the court for all. However, the true picture of Supreme

Court Operations is much different than the orderly process that Judge Scheinkman created. This is because the regulatory structure of New York doesn't give Judge Scheinkman the ability to enforce the standards that he creates and there is no penalty for Judges that simply ignore his guidelines and run courtrooms as they wish. In reality, Judge Scheinkman's processes are merely recommendations as the only power he has is to move Judges to other courtrooms if they don't follow his rules. As James Garfein, Counsel to Administrative Judge Scheinkman explained to me on November 8, 2010 "the Office of the Administrative Judge is not an investigative agency and Justice Scheinkman has no authority to discipline attorneys or judges." Judge Scheinkman's powers, like all regulatory powers I have found in this research are merely window-dressing as he has no real power to enforce the procedures he creates.

If the Chief Administrative Judge can't enforce the processes he creates and the Judicial Conduct Commission is powerless to enforce standards of behavior in the courtroom, who is watching the behavior of these elected officials? It's critical to remember that in matrimony cases we are speaking about elected official who have the power to order massive fees, imprison, strip assets, remove children and levy serious civil and financial penalties. This is serious power and New York is closing its eyes to risks that citizens take blindly stepping into this corrupt system.

New York has a responsibility to run fair courts that aren't procedural free-for-alls and effective judicial supervision MUST be a central component of matrimony reform. The current state of affairs allows Judges to run their courtrooms in any fashion they wish and this is often disastrous for uninformed, disadvantaged or destitute litigants.

### **Lax Supervision of Forensic Evaluators**

An often-overlooked component of the Divorce Industry is the network of experts that Judges rely on to formulate decisions on custody and equitable distribution. Court-appointed Experts (aka Neutrals, Forensics or Evaluators) play a major role in the fraud of the Divorce Industry but these expert evaluators have no

governance standards or New York State licensing requirements whatsoever. With expert-witness billings often times topping attorney fees, and a heavy reliance on judicial appointments for employment, tremendous conflicts of interest exist.

In New York Supreme Court judges order forensic evaluations of finances or custody fitness if either of these issues are in play. Court ordered fees for such evaluators in Westchester County easily reach \$15,000 for a single evaluation. In the case of custody reports there are no professional or state mandated formats for these reports. Custody reports can take any format the evaluator wishes and the evaluator has complete freedom as to how they conduct their work. Some use personality tests, some don't, some talk with family therapists, others don't, some visit the homes of families, others don't, it's entirely up the whim of the evaluator which avenues they pursue in evaluations. Evaluators have complete autonomy in how they construct their reports and there is no peer review or standard that governs this process. The process is a free-for-all and the results are largely determined by the Judges instructions and the relationships of attorney and evaluators.

In my research the closest thing I could find to a local regulatory body for forensic evaluators is the New York State Psychological Association. However, this is strictly a trade organization and has no authority over its members. As Dr. Gabrielle Stutman of the NYSPA pointed out to me in April, 2010, the American Psychological Association (APA) is responsible for standards of forensic custody reports, not the local NYSPA. Furthermore she points out that there are no standards for custody evaluations and that "custody evaluations must always be geared to the questions that the court asks regarding each individual case, [therefore], the expertise of the evaluator is necessary to decide what specific evaluations will take place."

The APA has standards of ethics and evaluations, however, there is no active enforcement of ethics nor does New York State recognize the evaluation formats that they advocate. What's left is a situation very similar to Judges and Lawyers.

Evaluators have complete latitude in what they do and how they do it with no professional oversight or ethics enforcement. So long as a Judge appoints an expert to a case they get paid with guaranteed court ordered fees (\$250/hour is considered a low court-ordered rate) and have no responsibility to deliver a quality, well-researched report. In fact, these evaluators are incented to do less work if the parties can't afford to pay their rates, regardless of the situation of the family as there is no public assistance for those who can't afford forensics report and steep punishments for those who don't pay. If a report is inaccurate, poorly researched or biased the onus is entirely on the litigants to pay for a new one, should the judge even allow it. Even if the report is the finest work written by the most qualified expert in a standard format Supreme Court Judges in New York have the right to simply ignore the reports and make any decision they like.

The only guarantee in these reports is that the evaluators are paid with court-ordered fees, everything else from the content of the reports to the methods used to create them to the qualifications of the evaluator is a crap shoot. Again, it is critical to remember that these reports are deciding the fate of children and shoddy work or unethical behavior has immense ramifications.

Once a Court-Appointed Neutral completes their 'neutral evaluation' of custody or finances the standard business practice in both of these industries is to freely solicit their services as expert witness to plaintiff or defendant, usually accompanied by a substantial increase in fee. For instance in my case the court ordered fees for custodial evaluation topped over \$14,000 at \$250 per hour while his expert witness fee was \$450 per hour with a \$10,000 minimum retainer. Since the expert witness can only testify on behalf of one party and the forensic evaluations can have tremendous weight, there is no incentive for reviewers to perform thorough, unbiased reports in their initial court-ordered evaluations. The incentive in our system is to deliver average or below average reports that will require expert witness or further evaluations to clarify.

As mentioned earlier, Judges appoint expert evaluators based on their own personal preference. There is no New York State registry or licensing requirements for these professionals so Judges simply choose whom they are comfortable working with. Each appointment by a Supreme Court Judge leads to many thousands of dollars of fees, and hundreds of thousands in some cases so these appointments must be made with great care and the decisions rendered must be subject to peer review prior to admission into Court.

Similar situations exist for financial evaluators. Financial evaluators are free of standards of professional behavior and are free to charge exorbitant court-backed fees for free-form evaluations. As with Custody Evaluators, Financial Evaluators have wide leeway in how reports are created and presented and they can become plaintiff or defendant expert witness once they complete their neutral report.

The courts should not be in the lead generation business for expert witness nor should neutral experts be permitted to abandon their neutrality and work for the litigants in a case. New York must develop a registration system and unified standards for forensic experts and there must be an automatic system for peer review of custodial reports when it is recommended that a parent be removed from a child's life. This is perhaps the most important decision any court will make ever, at least from the child's perspective, but New York is selling its children to the highest bidder.

### **Failures of the Appeals Court – Systematic Discrimination**

Any lawyer that has been reading this has no doubt been thinking that appeal is the correct course of action to fix an unjust judicial ruling, not disciplinary hearings. In a perfect world appeal is the correct remedy to fix broken rulings but unfortunately the appeals process in New York is utterly impossible to navigate for those who can't afford access to the court. Due to the faulty design of the New York State Judicial Civil Appeals Management System and tremendous bias to the divorce industry, appeal is simply not an option in the vast amount of contested divorce cases in New York.

As is the case with Supreme Court, there is no free legal support to appeal a matrimonial ruling. One who can't afford an attorney but has lost their children, or homes or are buried in debt beyond any realistic measure is shut out of the current Civil Appeals Management Program of New York. Even purchasing the court transcripts for an appeal costs upwards of \$3,000 in many cases and that is before a penny is spent on legal defense. Imagine a parent stripped of all their assets, struggling with child support and distribution payments that far exceed their ability to pay and a 65% net-wage garnishment trying to afford court transcripts or pay an appeals attorney. It is utterly impossible for such a person to appeal and this is the common state of victims of the Supreme Court System of New York. So appeal, the proper remedy for unjust rulings has been taken off the table by New York State, violating the civil rights of millions of citizens who have been through this system. Judges in Supreme Court know quite well that once they allow an attorney to pillage the assets of their clients an appeal is impossible.

Furthermore, New York State has implemented discriminatory practices in the Civil Appeals Management Program by systematically denying pre-trial conferences to those without representation. As Gail Miller, Administrator of the CAMP pointed out to me in a letter dated October 6, 2010 "it has been the court's long-standing policy not to schedule conferences in matters where one or more of the litigants is self-represented." This policy decision makes it virtually impossible for those who can't afford representation to appeal. Even if a pro se litigant were to make it into the matrimony Appeals Court a procedural defeat would be a certainty as I'm sure statistics would bear out, if statistics on pro se were actually kept.

Though I made requests to the Attorney General of New York and the Office of Court Administration in New York City for statistics on how pro se fare in Appeals Court and Supreme Court, there are no publicly available statistics that show the fate of pro se. This is an area that must be studied in more detail to fully determine the depth of civil rights abuses in the matrimony courts of New York. It is my sincere hope that one of the positive outcomes of my research is a radical reform in how the self-represented fare in the New York Supreme Court system.

Further complicating the appeal process for victims of the divorce industry are long standing practices of the Family Courts of New York to not modify child support orders within two years of the initial Supreme Court ruling. Within two years a parent can fall so far behind on unjust child support that there can be no way out besides wage garnishment or jail. Considering that back child support is not dischargeable in any court in the nation under any circumstance harsh financial rulings can have long-term effects.

### **Pro Se – The biggest losers.**

Those who can't afford representation face certain failure in the New York State Supreme Court matrimonial courtrooms. What I experienced as pro se was appalling from little things like being yelled at and threatened by the Judge's staff to numerous procedural slights.

There are no free legal resources available for the majority of pro se in matrimony proceedings so failure is a guarantee in a collusive system. Legal Aide of the Lower Hudson Valley for example refuses to represent litigants in Supreme Court or in matrimony appeal, especially if a litigant makes more than \$50,000 a year. Most victims of the Divorce Industry have income far above the financial resources of who legal aide normally helps. However, at \$350 an hour, even a \$200,000 income can't cover the costs of a contested divorce in New York. The Office of Pro Se in New York Supreme Court is woefully understaffed and legislatively banned from providing any advice whatsoever. The assistance from the Office of Pro Se consists of pointing to forms on a wall and giving vague advice as to which forms may be applicable to ones case.

Judges in New York will let pro se cases proceed even when there are serious implications for the disadvantaged party. While the Supreme Court of the US decided in Turner vs. Rogers that due process rights specified in the 14<sup>th</sup> amendment of the constitution apply in civil divorce cases, New York routinely violates civil rights to due process in matrimony cases. The 14<sup>th</sup> amendment

section 1 is quite clear in its statement that States aren't authorized to ignore due process in civil proceedings but this has become the norm in New York State.

*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.*

Considering the text of section 1 from the 14<sup>th</sup> amendment how can the current situation for pro se be justified? How can a parent who can't afford a lawyer lose total access to their children when and they are outspent by hundreds of thousands of dollars? How can a pro se parent expect a fair distribution of property and child support if they can't afford representation or understand the complexities of the trial system? Why is a child deprived of having their parents play a meaningful role in their lives simply because one parent had free access to resources and an axe to grind? It is utterly impossible for an individual to navigate the matrimonial legal system of New York and the results are devastating for those who try without representation. A citizen accused of a crime has due process rights guaranteed by the US Constitution such as the right to a lawyer and a fair trial but a family in the New York Supreme Court has none of these rights.

While I have attempted to obtain statistics from the Office of Court administration to about the fate of Pro Se in the New York Courts they have refused to provide this information. My antidotal evidence from interviews with multiple pro se litigants reveal tremendous lapses of due process but further study must be done on the fate of pro se in the matrimony courts of New York. An investigative body must review the verdicts of pro se cases to document suspected broad civil rights abuses in the divorce courts of New York. There are countless nonsensical verdicts driven by greed that have destroyed the lives of countless children and the time has come to end this cycle.

**Whistleblowers are the Problem – They have an axe to grind**

Mr. Garfein's statements, of the Office of Court Administration, typify the views I found in law enforcement, the New York Senate, the Attorney General of New York, the Office of Public Integrity and attorney and judicial disciplinary bodies.

"If you have a legitimate complaint I urge you to contact [the appropriate] agency.."

While I was able to show in some detail that ethical and procedural violations had occurred the bias is against those pointing out inequities. Victims of the system are assumed to be the problem – not the corrupt system. Once a victim has lost their children or had their assets pillaged by the Industry there is nowhere to turn. Appeals are impossible and the system moves on to another victim.

Every discipline body I approached as a victim of the system places the burden of proof on me, avoiding any sense of proactive responsibility for fair courts. Complaint documents must be perfectly presented with the evidence exactly clear or the complaints are summarily ignored or tossed over the fence. I'm not a lawyer, I have a full-time job, I have a family and I have become financially ruined in a collusive courtroom, why am I, the victim, supposed to be my own policemen and lawyer while taxpayer funded disciplinary committees take passive positions and ignore serious ethical violations.

Another pervasive attitude is that those who faced a corrupt court are simply upset about their divorce verdict. These comments, usually made with a bad joke about divorce or a story about a friend or ex-spouse typify the broad acceptance of the grotesque behavior of the industry. New Yorkers have come to accept as fact-of-life that the divorce courts of New York MUST cost hundreds of thousands of dollars and that this is simply the cost of divorce. The common view is that divorcees are the problem and that their complaints about the system are really about their own situation while in reality the problem is good old-fashioned greed and corruption.

**Economic Discrimination – Victimizing the Rich and Middle Class while Ignoring the Poor**

The New York State Constitution mandates that divorce be handled in the Supreme Court System while the Family Court system hears issues related to children and abuse. While there are free legal resources in Family Court, there are none available in Supreme Court. The expenses for an ordinary family facing contested divorce are staggering and have created a bifurcated judicial system where poor New Yorkers are denied access to the Supreme Court system and forced to the over-burdened family court system, where free legal assistance is available for some. The only viable judicial interventions for poor New Yorkers seeking divorce are extreme remedies in Family Court such as orders of protection. Those who can't substantiate extreme situations and can't afford Supreme Court either live in miserable situations, walk away or turn to the shady uncontested divorce industry where many surrender their property rights in favor of expedience.

What's left for the fraudulent divorce industry to exploit are those who can afford the cost of admission to New York Supreme Court but can't afford the fight. Admission fees to the Supreme Court system start at around \$10 -15,000 for a typical attorney retainer fee but with hourly rates exceeding \$350 in many jurisdictions of New York fees run into the hundreds of thousands of dollars for each litigant. Since the middle class of New York has no access to free legal assistance in Supreme Court and there is no escape cord to pull once the process begins citizens become trapped in the process so long as one side has money. Fees in a typical divorce case in New York Supreme Court include \$350/hour attorneys on both sides of the case, a Legal Guardian appointed by the court at \$250/hour and forensics that bill at rates beginning at \$250/hour. If it sounds like New York State acts more like an employment service for the Divorce Industry rather than an advocate for children and families you are beginning to see the picture.

One of the main reasons that the fraud in the divorce industry persists is that many of the victims of the divorce industry are middle-class families or defenseless children. Children have no voice in the process as the legal guardian system in New York is simply another bastion of fraud and court-ordered monster fees. Middle class citizens have no protections from civil rights groups, no assistance from

groups like Legal Aide and are left defenseless as the industry pillages their assets or removes their children in proceedings devoid of due process.

### **Failures of New York State Divorce Law**

There are numerous legal analysis of the failures of New York State divorce law but the industry has deep protections within the New York State legislature that protect it from reform. The laws of New York encourage expensive fighting while the majority of the practices common in New York have been legislatively stopped in most states.

The most salient failures of New York divorce law have been the presupposition of full custody, the fault system and absence of penalties for lies about assets. However, the New York Divorce Reform Law enacted in 2010 has exacerbated the problems of New York divorce law, further showing that the New York State Legislature is looking out for the interests of the powerful divorce industry and not hard working families of New York.. This bill, sponsored by Suzi Oppenheimer, introduced two devastating laws for New York families that have further ensconced New York's ties to the divorce industry. These two changes are matrimony for life and automatic funding of attorney's fees in contested divorce by a 'monied' spouse. Who would settle against a wealthy spouse knowing that lifetime spousal support is now possible in New York? Who wouldn't charge into an attorney's office when angry about a situation knowing that a spouse is now legally required to pay attorneys fees? These laws are only a further guarantee of attorney's fees and throw another iron in the fire for those seeking money in divorce.

Of course we hear about the antiquated fault system in New York but as I pointed out earlier, this is a non-issue in the vast majority of divorce cases. Ms. Oppenheimer attempted to address the fault issue but rather than ending the fault system her misguided solution was to create a new fault of no-fault. New York simply sidestepped the issue and added a new fault that can still be contested in court – as is happening to an acquaintance at this instance. Imagine a courtroom

where you are paying over \$1000 per hour arguing if the 'fault' in your case is 'no-fault'. This surreal situation describes the state of New York matrimony laws but I urge you to research some of the many well-crafted legal documents that discuss the legal problems of New York State divorce statutes in more detail. Suffice to say the New York State legislature is not the answer to New York State Divorce Laws.

Sadly, the only solutions to New York State divorce laws will be a brave soul who challenges the constitutionality of the system in US Supreme Court, criminal investigations by the Federal Government of collusive courtrooms and tort law suits that find New York liable for pain and suffering caused to children ripped from their parents in pro se cases.

### **Why am I doing this?**

I began my quest for divorce reform after tremendous debacle as pro se in Supreme Court in Westchester County. I experienced a true kangaroo court and was shut out of appeal by the CAMP system. As I experienced the laziness of ethical supervision of New York, the impossibility of appeal and living with the tremendous burden of a nonsensical ruling it dawned on me that I was the victim of a perfect fraud. The courtroom that was supposed to be a safe haven turned predatory and there was no escape hatch until the system decided it was time. The ethical violations in my case were blatant yet the evidence was ignored and all complaints were dismissed without explanation or investigation. Instead of giving up I decided to devote the time to share my research, experience and beliefs in the hopes that it will end the partnership that New York has created with the Divorce Industry and increase scrutiny into this bastion of fraud and civil rights violations.