

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ DEC 29 2004 ★
BROOKLYN OFFICE

SHARWLINE NICHOLSON, individually and on behalf
of her infant children, DESTINEE BARNETT and
KENDELL COLES, infants, and on behalf of all others
similarly situated,

**STIPULATION & ORDER
OF SETTLEMENT**

Plaintiffs,

-against-

00 CV 2229 (JBW) (CLP)

NAT WILLIAMS, *et al.*,

Defendants.

EKAETE UDOH, individually and on behalf of her infant
children, EDU UDOH, IMA UDOH, NSIKAK UDOH, and
ASUNO UDOH,

Plaintiffs,

-against-

00 CV 5155 (JBW) (CLP)

NICHOLAS SCOPPETTA, *et al.*,

Defendants.

SHARLENE TILLET, individually and on behalf of
infants WINSTON DENTON and UGANDA GRAY,

Plaintiffs,

-against-

00 CV 6885 (JBW) (CLP)

NICHOLAS SCOPPETTA, *et al.*,

Defendants.

WHEREAS this Court issued a preliminary injunction, effective June 28, 2002, setting forth certain practices and requirements for the New York City Administration for Children's Services regarding the handling of cases involving domestic violence; and

WHEREAS the preliminary injunction has been in effect since that time, and

WHEREAS ACS has substantially complied with the terms of the preliminary injunction; and

WHEREAS the New York Court of Appeals has issued a decision in *Nicholson v. Scopetta*, — N.Y.3d —, 2004 N.Y. LEXIS 3490 (N.Y. Oct. 26, 2004) ("*Nicholson* decision"); and

WHEREAS the City has stated its intention to comply with the decision; and

WHEREAS the parties wish to settle the instant action;

NOW THEREFORE, it is hereby stipulated and agreed as follows:

1. The preliminary injunction will terminate on December 31, 2004.
2. The plaintiffs' request for a permanent injunction shall be placed on this Court's suspense calendar until September 1, 2005.
3. The parties agree that the *Nicholson* decision accurately sets forth the applicable law to be followed by ACS.
4. The New York City Administration for Children's Services ("ACS") will forthwith establish a procedure for resolution of disputes concerning the application of the principles of law set forth in the *Nicholson* decision, as follows:

Plaintiff Subclass A or B may bring to the attention of City defendants written complaints regarding individual incidents in which City defendants allegedly failed to handle a matter involving a *Nicholson* class member consistent with the requirements of the *Nicholson* decision. Such complaints shall be made in writing

to the ACS Deputy Commissioner for Family Court Legal Services (or the person fulfilling the comparable responsibility if such position is no longer in existence) or his/her designee, with copies simultaneously provided to an identified attorney in the Office of the Corporation Counsel. The Deputy Commissioner or his/her designee will promptly investigate the complaint and respond in writing to plaintiffs within ten business days of receiving plaintiffs' complaint, except that if the complaint involved the removal or threatened removal of a child or children without court order, the response shall be made within three business days of receiving plaintiffs' complaint. Defendants shall make a good faith effort to resolve the complaint in accordance with the decision of the New York Court of Appeals.

5. Plaintiffs may restore this action to the active calendar upon a failure of ACS to establish the mechanism set out in paragraph 4 of this stipulation and order, solely for the purpose of compelling ACS to establish such a mechanism.

6. On September 1, 2005, plaintiffs' claims for injunctive and declaratory relief shall be dismissed with prejudice unless, before that time, plaintiffs move to restore the case to the Court's active docket on a showing that, as to the filing of petitions against, or the removal of children from, victims of domestic violence, defendants have failed to act, on a systemic basis, consistent with the decision of the Court of Appeals in Nicholson. In the event of any such motion, plaintiffs must demonstrate that defendants' failures or omissions were not minimal or isolated, but were substantial and sufficiently frequent or widespread as to be systemic. This dismissal will not bar plaintiff class members from commencing actions for declaratory and injunctive relief for alleged violations of law occurring after September 1, 2005.

7. Plaintiffs shall only be entitled to, and shall be awarded, reasonable attorneys' fees for work performed through December 31, 2004, plus reasonable fees on the fee application, pursuant to 42 U.S.C. §1988, as prevailing parties in this litigation. Defendants waive any

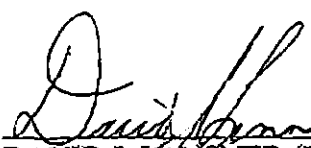
challenge to plaintiffs' right to fees for work performed in the Second Circuit Court of Appeals and the New York Court of Appeals, and agree that the only challenge which they will raise to plaintiffs' application is to the amount of the fees. Plaintiff Subclasses A and B shall provide defendants with all records or other documents supporting their fee claims on or before January 21, 2005. Because of the unavailability of records due to the events of September 11, 2001, Plaintiff Subclass B shall be permitted to use reconstructed time records for all time prior to April 15, 2002. Notwithstanding paragraph 6 of this stipulation and order, the claims for declaratory and injunctive relief shall not be dismissed and the case shall remain on the court's suspense calendar until the determination and payment of attorneys' fees to plaintiffs.

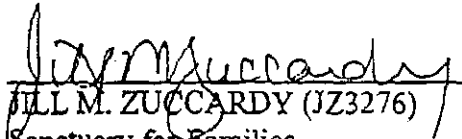
8. No provision of this stipulation will prohibit any class member from bringing an individual lawsuit seeking damages for alleged violations of State or federal law.

Dated: New York, New York
December 16, 2004

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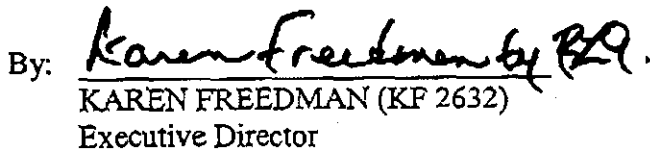
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By: 
KAREN FREEDMAN (KF 2632)
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SO ORDERED:

s/Jack B. Weinstein
U.S.D.J.

12/17/04

***** -COMM. JOURNAL- ***** DATE DEC-17-2004 ***** TIME 11:18 *****

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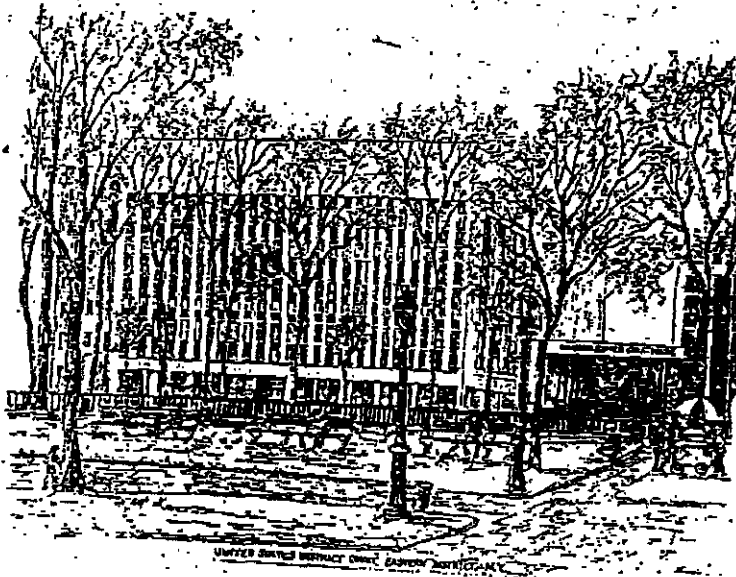
-HON. JACK B. WEINSTEIN -

***** -JBW

- ***** - 1 718 260 2527- *****

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RE: Nicholson v. Williams 00 CV 2229 (JBW)