

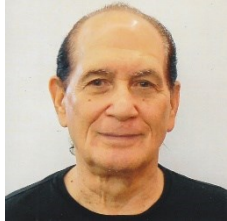


Bits and Bytes™

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The Law Firm of Joel R. Brandes, P.C is the **New York Appeals Law Firm**.™ Mr. Brandes concentrates his practice on appeals in divorce, equitable distribution, custody, and family law cases, involving high profile, high net worth litigation, as well as post-judgment enforcement and modification proceedings. He also serves as counsel to attorneys with all levels of experience assisting them with their difficult appeals and litigated matters. **Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."**

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Appellate Division, First Department

Where Court appointed Forensic Evaluator was removed from the Mental Health Professionals Panel during the Case Supreme Court should have granted the plaintiff's motion to remove him, deem his report inadmissible at trial, and for a refund of fees paid to him

In *Chu v Chu*, --- N.Y.S.3d ----, 2024 WL 462349, 2024 N.Y. Slip Op. 00610 (2d Dept.,2024) the Supreme Court, appointed Marc Abrams, a psychologist, to serve as a neutral forensic evaluator to assist the court in rendering custody and parental access determinations. At the time of his appointment, Abrams was a member of the Mental Health Professionals Panel for the Appellate Division, First and Second Judicial Departments. In the appointment order, the court directed Abrams, among other things, to interview the parties and the children and issue a report setting forth his findings by January 27, 2021. On August 12, 2021, Abrams issued his report. In December 2021, the plaintiff submitted a

letter to this Court's Office of Attorneys for Children, alleging that Abrams engaged in misconduct while performing his duties as a forensic evaluator in this action. In response, that office notified the plaintiff that, effective August 24, 2021, Abrams was no longer a member of the Mental Health Professionals Panel. In July 2022, the plaintiff moved, to remove Abrams as the court-appointed forensic evaluator, in effect, to deem Abrams's report inadmissible at trial, for a refund of fees paid to Abrams. Supreme Court, inter alia, denied the plaintiff's motion. The Appellate Division held that the Supreme Court should have granted the plaintiff's motion to remove Abrams, to deem Abrams's report inadmissible at trial, and for a refund of fees paid to Abrams. It observed that the Mental Health Professionals Panel was established to ensure that courts and parties have 'access to qualified mental health professionals' who are available to evaluate the parties and to assist courts in reaching appropriate decisions as to, inter alia, custody and [parental access]" (Carlin v. Carlin, 124 A.D.3d 817, 818, 3 N.Y.S.3d 71, quoting 22 NYCRR 623.1; see 22 NYCRR 680.1). The Committee is charged with determining who is qualified to serve as an impartial, court-appointed forensic evaluator, subject to the approval of the Presiding Justices of this Court and the First Department. Abrams's removal from the Mental Health Professionals Panel, resulting from a complaint made against him, therefore indicated that the Committee concluded that he was no longer "qualified to assist courts in reaching an appropriate decision as to custody and visitation". Moreover, both the appointment order and the Supreme Court, Westchester County, Matrimonial Part Operational Rules permitted the Supreme Court to impose sanctions upon Abrams in the event that he failed to issue his report by the deadline set forth in the appointment order. Abrams issued his report more than six months after that deadline. By the time the Supreme Court issued its order denying the plaintiff's motion, the report was nearly a year and a half old.

As the parties' marriage was solemnized by a rabbi with witnesses in a traditional Jewish ceremony, their failure to obtain a marriage license did not invalidate the marriage, even though they may not have intended to have their marriage legally recognized under New York law. Marriage is a special status governed by laws and the State and not determined by those entering the contract

In Spalter v Spalter, --- N.Y.S.3d ----, 2024 WL 367147, 2024 N.Y. Slip Op. 00465 (1st Dept.,2024) the Appellate Division affirmed an order which denied the defendant's motion to dismiss this divorce action and declared the parties' marriage valid. The parties took part in a religious wedding ceremony officiated by a rabbi under a chuppah, with 29 guests and featuring traditional Jewish rites and blessings. They signed a ketubah [Jewish wedding contract] in the presence of two witnesses, a separate document that stated they were entering into a "marriage that is binding under Jewish law" but not "legally recognized" under New York law, and an arbitration agreement referring to them as "husband-to-be" and "wife-to-be," in which they authorized the Beth Din to preside over marital disputes. However, they never obtained a civil marriage license, and according to the defendant, held themselves out as single, lived separate lives and only entered into the religious marriage to facilitate their children's acceptance into day schools and the family into synagogues. At the time of the ceremony, the parties had two children together, and now had four, three of which were children with special needs. The Appellate Division held that the motion court properly determined that the parties' marriage is valid (see Domestic Relations Law §§ 10, 12, 25), as the defendant failed to overcome New York's "strong presumption favoring the

validity of marriage. This strong presumption of the validity of marriage is even greater where, as here, the legitimacy of children is concerned. Domestic Relations Law § 12, provides, as relevant, that “[n]o particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman” if the parties “solemnly declare” in the “presence” of a clergyman and at least one other witness that “they take each other as spouses.” Although Domestic Relations Law § 13 requires all persons intending to be married in New York to obtain a marriage license, § 25 provides that “[n]othing in [Domestic Relations Law article 3] shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age”. As the parties’ marriage was solemnized by a rabbi with witnesses in a traditional Jewish ceremony, their failure to obtain a marriage license did not invalidate the marriage. That the parties may not have intended to have their marriage legally recognized under New York law is not dispositive because “while marriage is a contract between two consenting individuals, it is a special status governed by laws and the State and not determined by those entering the contract. Although Domestic Relations Law § 10 clearly requires that both parties consent to the marriage, that requirement was met here. The record shows that, while the parties signed a document that stated that their marriage was not “legally recognized” under New York law, the parties consented to the marriage, especially in light of their acknowledgment in that same document that they were “entering into a marriage that is binding under Jewish law.” Even though defendant claimed that plaintiff has listed herself as unmarried in her tax returns, this did not prevent her from arguing that the parties were married. The proposition that a party to litigation may not take a position contrary to a position taken in an income tax return (*Mahoney–Buntzman v. Buntzman*, 12 N.Y.3d 415 (2009)), does not apply to the question of marital status, which is a mixed question of law and fact.

Appellate Division, Fourth Department

In Termination of Parental Rights Proceeding mother was denied due process of law based upon the bias against her displayed by the Family Court Judge.

In *Matter of Anthony J.*, --- N.Y.S.3d ----, 2024 WL 395259, 2024 N.Y. Slip Op. 00574 (4th Dept., 2024) the Appellate Division reversed an order which, terminated the mother’s parental rights pursuant to Social Services Law § 384-b. It agreed with the mother that she was denied due process of law based upon the bias against her displayed by the Family Court Judge. Although the mother’s contention was unpreserved for review because the mother did not make a motion for the Family Court Judge to recuse herself the Court exercised its power of review in the interests of justice. It observed that in New York, the fact-finding stage of a state-initiated permanent neglect proceeding bears many of the indicia of a criminal trial. The State must provide the parents with fundamentally fair procedures, including the right to a hearing before an impartial factfinder. The record demonstrated that the Family Court had a predetermined outcome of the case in mind during the hearing. During a break in the hearing testimony, a discussion occurred on the record concerning a voluntary surrender. When the mother changed her mind and stated that she would not give up her child, the court responded, “Then I’m going to do it.” At that point, the only evidence that had been presented was the direct testimony of one caseworker. The court’s comments, in addition to expressing a preconceived opinion of the

case, amounted to a threat that, should the mother continue with the fact-finding hearing, the court would terminate her parental rights. Those comments were impermissibly coercive. That the court made good on its promise to terminate the mother's parental rights could not be tolerated. Given the preconceived opinion expressed and the lack of impartiality exhibited by the Family Court Judge the matter was remitted to Family Court for a new hearing by a different judge.



The [New York Matrimonial Trial Handbook](#) (Bookbaby) is a “how to” book which focuses on the procedural and substantive law, and law of evidence you need to know for trying a matrimonial action and custody case. It has extensive coverage of the testimonial and documentary evidence necessary to meet the burdens of proof. There are *thousands of suggested questions* for the examination and cross-examination of the parties and expert witnesses. It is available in hardcover, as well as Kindle and electronic editions. See [Table of Contents](#). New purchasers of the New York Matrimonial Trial Handbook in hardcover from Bookbaby, or in Kindle and ebook editions from the Consulting Services Bookstore can obtain a free copy of the New York Matrimonial Trial Handbook 2023 Update pdf Edition by submitting proof of purchase to divorce@ix.netcom.com

[The New York Matrimonial Trial Handbook 2023 Cumulative Update](#) is available on Amazon in hardcover, paperback, Kindle, and electronic editions. This update includes changes in the law and important cases decided by the New York Courts since the original volume was published. It brings the text and case law up to date through and including December 31, 2022, and contains additional questions for witnesses. See [Table of Contents](#).

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