

Documentation will show that Schnectady County Hearing Examiner John J. Warner Jr. has:

1. Prevented and conspired to prevent Charles Collins from getting a fair trial.
2. Deliberately and knowingly misstate, misrepresent and lied about the facts, the evidence and the testimony in his decisions.
3. Based part of his decision upon statements made by Arlene's attorney in discussions held in private and off the record. NO TESTIMONY OR EVIDENCE WAS ALLOWED in the court.
4. Allowed and encouraged Arlene to commit perjury while under oath. He refused to say anything to her about her continuously perjuring herself.
5. Covered up her perjury in his decisions and deliberately used her perjured testimony in his decision claiming her statements as fact.
6. Refused to disqualify himself from hearing the case when requested to do so. The documentation before the court detailed why Mr. Collins believed Warner could not be impartial. Under SUBCHAPTER C; RULES OF CHIEF ADMINISTRATOR OF COURTS; PART 100; JUDICIAL CONDUCT
100.3 Impartial and diligent performance of judicial duties
(c) Disqualification
 1. A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned.
7. Ignored all evidence detrimental to Arlene.
8. Deliberately made degrading and insulting statements against and about Mr. Collins which he knew to be false.
9. Deliberately misrepresented the agreements between Mr. Collins and his ex-wife in order to make him responsible for bills that he previously wasn't responsible for. He was also able to make Mr. Collins liable for past due bills.
10. Made Mr. Collins responsible for paying part of the medical bills for his ex-wife's abortion. He was not the father.
11. His decision was based upon expenses that were inflated and fabricated by both Warner and Arlene.

12. Did not consider income at all in his decision.
13. Did not consider change of circumstances at all in his decision.
14. Conspired to defraud Mr. Collins of his income.
15. OTHER REASONS WARNER SHOULD NOT HAVE HEARD THIS CASE

- A. Warner was appointed by the Chief Administrator to hear Schnectady County Family Court matters not Saratoga. Judge James is the one who appointed Warner to hear the case in Schnectady County. There is simply no authority, either in the statute, the Uniform Rules, or in an Order of the Administrative Justice for the Fourth Judicial District for Judge James' Order of Referral to Schnectady County Family Court.

All documentation shows John J. Warner Jr., Hearing Examiner, Schnectady County. If he had been appointed by the Chief Administrator to hear Saratoga Family Court matters, documentation would show John J. Warner Jr. Saratoga and Schnectady County Hearing Examiner. No where has he referred to himself as the Hearing Examiner for Saratoga County.

- B. §174 of the Family Court Act provides: The Family Court in a county may for good cause transfer a proceeding to a family court in any other county where the proceeding might have been originated and shall transfer a proceeding laying venue in the wrong county to a family court in any county where the proceeding might have been originated.
- C. The applicable venue provision, §421 of the Family Court Act, did not authorize originating this proceeding in Schnectady County Family Court. Neither of the parties in this case resided in Schnectady County. Judge James' Order, thus, ran afoul of §174 of the Family Court Act, and was void for that reason.
- D. §439 of the Family Court Act prescribes the Hearing Examiner's subject matter jurisdiction. and excludes certain matters from this jurisdiction. Among the matters excluded, are matters arising under §455 of the Family Court Act.

Hearing examiners shall not be empowered to hear, determine and grant any relief with respect to issues specified in section four hundred fifty-five of this act,...which shall be referred to a judge as provided in subdivision (b) or (c) of this section.

- E. Among the Petitions before the Schnectady County Family Court Hearing Examiner on September 14, 1987, was a Modification Petition dated August 19, 1987, prepared and filed by Mr. Collins himself. The Hearing Examiner refers to this Petition as a ridiculously long Petition, rejects Mr. Collins' request for a reduction in support upon the ground that he had lost his job, and characterizes the other issues set forth in the Petition as "in the nature of an appeal from the prior decisions and order of this Court and are not within the scope of my statutory authority to hear and determine.
- F. These issues appearing to be in the nature of and appeal essentially deal with Mr. Collins' financial inability to comply with Mr. Warner's and Judge James' Support Orders, and thus constitute issues "specified in §455 of the Family Court Act.
- G. Financial inability to comply with a Support Order sought to be enforced by commitment for contempt is ground for a Petition under Subdivision 2 of §455 of the Family Court Act for an Order to be relieved of the payments being directed in the Order sought to be enforced and from the Commitment Order, and is further, under Subdivision 5 of §455, a defense to a Petition to enforce the Support Order and the Commitment Order. In dealing with a compulsory reference to hear and determine, the law is clear that there are non-referrable causes of action, together with a referable cause of action, the case cannot be referred. (Shafer v. City Bank Farmer's Trust Co., 269 NY 336, 1936)
- G. Martelle (130 AD 2nd 867 (3rd Dep't 1987)) clearly holds that a Hearing Examiner who lacks subject matter jurisdiction to hear a defense to a Petition cannot hear the Petition.
- H. Here, the Hearing Examiner himself recognized that he was without authority to hear the issues raised in Mr. Collins' Modification Petition dated August 19, 1987 which among other things alleged facts constituting the defense of inability to pay under Subd. 5 of §455 of the Family Court Act. This case thus falls squarely within the holding of Martelle. Lacking authority to hear the whole matter, the Hearing Examiner should not have heard any part of it, but should have referred it back to Saratoga County Family Court.