

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL PIERCE and GILBERT MARTIN,

Civil Action No.
9:14-CV-1028 (GTS/DEP)

Plaintiffs,

v.

CRAIG DEMMON, Sergeant Bare Hill
Correctional Facility, *et al.*,

Defendants.

FOR PLAINTIFFS:

LAW OFFICES OF ELMER R. KEACH ELMER R. KEACH, III, ESQ.
One Pine West Plaza-Suite 109
Albany, New York 12205

FOR DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
The Capitol
Albany, NY 12224

TIMOTHY P. MULVEY, ESQ.
Assistant Attorney General

DAVID E. PEEBLES
CHIEF U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in connection with this action is a motion brought by defendants requesting an order directing plaintiff Gilbert Martin to pay \$750 based upon his failure to appear for a scheduled physical

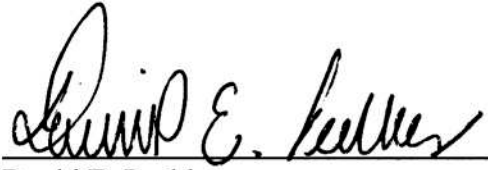
examination to be conducted pursuant to Rule 35 of the Federal Rules of Civil Procedure. Dkt. No. 91. Oral argument was heard in connection with defendants' motion during a telephone conference held on the record on March 30, 2016. At the close of that conference, I issued a decision granting defendants' motion, in part, and requiring plaintiff Gilbert Martin to defray the cancellation fee for that aborted Rule 35 exam to the extent of \$250.00.

Based upon the parties' submissions and oral argument, and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED as follows:

- (1) Defendants' motion for sanctions (Dkt. No. 91) is GRANTED, in part.
- (2) Plaintiff Gilbert Martin is hereby directed to pay to the office of the New York State Attorney General the sum of \$250.00, based upon his refusal to be transported for a scheduled examination pursuant to Rule 35 of the Federal Rules of Civil Procedure.

(3) No costs or attorney's fees are awarded to any party in connection with defendants' motion.



David E. Peebles
U.S. Magistrate Judge

Dated: April 1, 2016
Syracuse, NY