

May 12, 2022

New York State Division of Criminal Justice Services (DCJS)

Office of Legal Services (OLS) Memorandum

Matter of Stevens et. Al. v. The New York State Division of Criminal Justice Services, et. Al.

On May 5, 2022, the Appellate Division in the First Judicial Department (Appellate Division) ruled on the case *Matter of Stevens et. al., v. The New York State Division of Criminal Justice Services, the New York State Commission on Forensic Science, and the DNA Subcommittee of the New York State Commission on Forensic Science*. Previously, the lower Supreme Court, New York County, denied a petition brought by Stevens to annul the Familial DNA Search regulations found at 9 NYCRR 6192.1 and 6192.3. **The Appellate Division, in a 3-2 decision, reversed the ruling of the Supreme Court, vacating the regulations.**

In its reversal, the Court opined, among other things, that policies authorizing the use familial searches is an inherently legislative function and New York State, in promulgating the regulations, acted outside the scope of their authority. The Court stated, in part,

Under the enabling legislation, the powers and the duties of the respondents were to “[p]romulgate standards for a determination of a match between the DNA records contained in the state DNA [databank] and a DNA record of a person submitted for comparison therewith” (Executive Law § 995-b [12]) ***There is no basis to conclude that the reference to “match” in the enabling legislation was intended to give respondents broad authority to decide any and all scientific uses that the DNA contained in the databank may be put to, as long as it serves the general purposes of law enforcement. *** Prior to the adoption of the family DNA regulation there was no legislative guidance at all on this particular use of DNA information. In fact, there was no known consensus within the New York legislature on what should be done with respect to searches in the New York State databank for familial matches ***bills permitting familial DNA searches were repeatedly before the legislature from at least 2014, but not one of them passed *** no court proceeding was brought challenging [partial match] promulgation. Consequently, the existence of the partial match DNA regulation neither proves nor disproves the scope of respondents’ authority to promulgate the Familial DNA regulation challenged in this case.”

The Court has vacated the familial search regulations, meaning that they are no longer in effect. The decision can be appealed to New York’s highest court, the New York State Court of Appeals. A notice of the intent to appeal must be filed by June 9, 2022.

The Court’s decision does not address retroactivity. Thus, while new familial searches are prohibited at this time, it is our opinion that already commenced searches are still permissible.

Please be advised that we are still reviewing the decision and its implications and are currently discussing appeal strategies with the Office of the Attorney General.

###