

At a term of the IDV Supreme Court of the State of New York, held in and for the County of Westchester, at Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601, on the 4th day of October, 2022.

Hon. Susan M. Capeci, A.J.S.C.

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ALLAN KASSENOFF,  
Plaintiff,

-against-

CATHERINE KASSENOFF,  
Defendant.  
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**DECISION AND ORDER**  
Index #58217/2019

(Mot. Seq. #51 & 62)

In this matrimonial proceeding, the defendant wife originally filed a Notice of Motion dated February 10, 2022, (Mot. Seq. #51), seeking to disqualify the Attorney for the Children from representing the three minor Children, Alexandra (DOB 7/15/09), Charlotte (2/1/11) and Josephina (8/10/13) as Attorney for the Children in this matter. In support of that motion, the defendant wife argued that the Attorney for the Children ("AFC"), Carol Most, Esq., had improperly substituted her judgment for the children, failed to credit her clients' and the wife's claims of physical and emotional abuse by the husband, and failed to advocate zealously on their behalf.

As previously noted in prior decisions, this divorce action was commenced on May 24, 2019, and on or about February 8, 2022, this matter was transferred to the Integrated Domestic Violence part<sup>1</sup>. At the time the case was transferred, there were

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<sup>1</sup> This matter was transferred to the IDV part due to an arrest of the mother for Criminal Contempt in the 2<sup>nd</sup> Degree. That charge has since been dismissed.

approximately twenty-two open undecided motions pending in this case. While those motions have now been decided by Decision and Order, or otherwise resolved by the Court [i.e., withdrawn or settled], the wife's motion to disqualify the AFC under motion sequence #51 was never answered or responded to by the husband or AFC. Due to concerns regarding the role of the AFC in this case, which will be further discussed herein, the Court has now allowed the wife to update and supplement the previously filed motion to remove the AFC, and to have responses to that from the husband and the AFC. The wife has now done so, which has been listed as a separate motion sequence, Motion sequence #62.<sup>2</sup> The husband and the AFC have each filed responsive papers in opposition to the motions under sequences #51 and #62, and the wife has filed a Reply.

As previously noted by this Court, this has been a highly contested and heavily litigated matrimonial case. This Court is the fifth Judge handling this matter. To date, over sixty-two motions have been filed in the case, and countless emails and letters submitted by all concerned. The AFC, Carol Most, Esq., was appointed to represent the parties' three children shortly after the commencement of this case. A prior Judge presiding over this matter (Judge Koba), held a ten day hearing on temporary custody of the children, following which she awarded temporary sole legal and physical custody to the husband by Decision and Order dated August 17, 2020, with the wife to have therapeutic supervised visitation with them twice a week, and supervised Zoom calls

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<sup>2</sup> In motion sequence #62, the wife sought to disqualify the AFC from representing the three minor children. The wife also moved for a hearing on the following collateral issues: the AFC's alleged malpractice; an allegation that the AFC's fees were excessive; a request for a court-ordered investigation of a report made to Child Protective Services against the mother; and a request for legal fees to the mother on this motion.

daily. At that time, the AFC had taken the position that she would “substitute her judgment” for the children, who had stated that they wished to live with their mother and she had supported the father’s application for temporary sole custody. Prior to the commencement of the divorce action, the wife had been their primary caretaker, with the husband participating in their care but working long hours away from home. Both parents here are attorneys. Currently, the wife has court-ordered therapeutically supervised visitation with the children, as supervised by Jennifer Culley, LCSW, since March 2022, by Order of this Court.

As the AFC notes in her opposition papers, she has not “used her discretion” for over one year, stating that the current position of each of the children is that they do not want to visit with their mother. While this Court does not believe that the AFC has misrepresented their position based upon what they are telling her, this Court has previously stated its observations of the exceedingly hostile relationship between the mother and the AFC (as well as between the mother and the father), and the related concerns that the children are conscious of these negative feelings. The Court has noted that there is a marked contrast between what is being reported by Ms. Culley, the visitation supervisor, and the AFC’s representations as to what the children are telling her about the visits with their mother. Ms. Culley had reported initially that the visits were going quite well with positive interactions and appropriate discussion. Ms. Most has always maintained that the children don’t want to see their mother at all and are upset at being “forced” to attend. Recently, the issue has come to a head with the father and Ms. Most reporting that Ms. Culley is inappropriate and the visits are detrimental to the children. Ms. Culley has reported that one child broke down crying,

and that that child stated she did not know what to say in the visits, because her father has told her that if Ms. Culley continues to report that the visits are going well, the child would then have her residence changed to live with the mother.

It has been the AFC's current position that she is opposed to any access between the mother and the children, since the girls are not in therapy. As reported by the AFC and the husband, the therapist for both younger girls, Dr. Susan Adler, resigned because she was sued by the wife. According to Ms. Most, no subsequent therapist had been selected on the theory that the therapy would only be sabotaged by the wife. The husband's position has been a total opposition to any visitation between the children and their mother, including Zoom visits, whether therapeutically supervised or not. He maintains the children do not want any visitation with their mother. He has also taken issue with the current supervisor.<sup>3</sup>

It is against this backdrop that the Court now turns to a consideration of all of the reasons, taken in their totality, that this Court must disqualify and remove the AFC in this case for the sake of the children, and appoint three separate attorneys to represent them individually.

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<sup>3</sup> On or about August 10, 2022, via email, this Court requested that all parties, through counsel, submit names of possible therapists so that the children could re-commence therapy. Mr. Kassenoff did not submit any names and his attorney responded, "On the issue of therapy – Mr. Kassenoff has already been 'put in the important role... by virtue of... (Judge Koba's Decision and Order)... granting him interim sole legal custody following a ten-day hearing" (See NYSCEF doc No. 2505). The mother submitted three names of therapists with the request that they be viewed in camera. Ms. Most did not submit any names.

1. The AFC Hired Christine Paska, Esq., the ADA in Charge of the Investigation of the Mother for the Charge of Criminal Contempt in the 2<sup>nd</sup> Degree

On January 26, 2022, the wife was arrested and charged with criminal contempt in the second degree, based upon her alleged violation of an order of protection issued in the matrimonial action (Lubell, J.) which required her, *inter alia*, to stay 1 mile away from the husband, children, and the marital home as well as “AT LEAST ONE (1) MILE AWAY FROM PERSONS AND PLACES LISTED ABOVE.” (as in the original). The matter was transferred to the IDV part, and the wife appeared for arraignment before this Court on March 3, 2022. The criminal matter appeared one further time on the calendar on March 16, 2022, and upon the application of the District Attorney’s office, the matter was dismissed and sealed pursuant to CPL 160.50.<sup>4</sup>

The Special Prosecutions Bureau of the District Attorney’s office, which handles all criminal matters before this Court, consists of many Assistant District Attorneys (“ADA’s”), who rotate in handling court calendar appearances. Upon information and belief, each case is assigned by that office to one ADA to prosecute, and often re-assigned based on staffing needs. Any one of the staff attorneys may appear on a given date to conduct the court’s calendar. This Court knew Ms. Christine Paska, Esq. as an ADA in the Special Prosecutions Bureau of the District Attorney’s office, as she routinely

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<sup>4</sup> It was determined that Ms. Kassenoff was never served with the Order of Protection. It was dismissed in the “interests of justice” but arguably should have been a dismissal on the merits. The September 15, 2021, TOP referred to in ADA Ms. Paska’s affidavit has not been uploaded to NYSCEF, nor is there any record of it in the WEB DVS registry. The September 16, 2022, TOP has been uploaded to NYSCEF and the WEB DVS registry, and the registry reflects that the applicant was Josephina Kassenoff (*see* NYSCEF Doc. No. 1657). The September 16, 2021, TOP did not simply prohibit Ms. Kassenoff from being within “a one mile zone around the children’s school and home.” It also prohibited Ms. Kassenoff from being one mile away from their persons, wherever they are. The vagueness of that provision raised due process concerns with this Court.

appeared on calendar calls. Ms. Paska had in fact informed the Court, in an off-record comment, that she was leaving her position in June of 2022, to become an associate at the firm of Most & Schneid, PC.<sup>5</sup> The Court could not and did not know, however, that Ms. Paska was the attorney who had been handling the investigation of the wife, Ms. Kassenoff. The Affirmation In Support of Motion to Dismiss in the Interests of Justice, executed by Ms. Paska, dated March 16, 2022, was included in the moving papers of the wife, Ms. Kassenoff (NYSCEF doc. 2594). This Court had never seen this document until reviewing the papers submitted in connection with the instant motion. As stated previously, the criminal case against Ms. Kassenoff appeared two times on the calendar. March 3, 2022, was an in person appearance for arraignment. The affirmation by Ms. Paska, which contains many relevant statements of fact, is dated March 16, 2022, which was the second and final date of the criminal case. The case was dismissed on that date, never to be re-calendared. Further, the Affirmation could not have been submitted in Court on March 16, 2022, because the Court file indicates it was a virtual appearance, via Microsoft Teams, with no personal appearances.<sup>6</sup> No conferences were ever held on the criminal case.

The identity of the ADA investigating the case against the wife, Ms. Kassenoff became increasingly important as the parties had repeatedly raised the circumstances of this investigation as an issue of fact, thereby presenting the very real likelihood that someone from the District Attorney's office would be called as a witness in the custody

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<sup>5</sup> According to Ms. Paska's Affirmation submitted in connection with this motion by the AFC (See NYSCEF Doc. No. 2623), she first submitted her application to work at the AFC's firm on May 10, 2022, and began work there in July of 2022.

<sup>6</sup> Presumably, if Ms. Paska and Ms. Most were alleging that the Court was aware of Ms. Paska's direct involvement, they would have mentioned that this Affirmation had been submitted to the Court, which they did not.

trial. The father's attorney has maintained that his client was ordered to bring the children in to be interviewed by the DA's office or its agent (in connection with the Criminal Contempt charge). The mother maintains that it was not necessary for him to bring the children to the District Attorney's office, or its agent, and that it is an example of bad parenting that he permitted them to be interviewed (or initiated it). The AFC, Ms. Most advocated for the father and stated in a letter to the Court: "As to the appointment with the DA's office, this Court is probably well aware of what takes place and should understand that the Father did not take the girls anywhere that we was not requested to take them by the DA's office." <sup>7</sup> (See NYSCEF Doc. No. 2403).

The Court had an increasing concern as to the identity of the ADA assigned to prosecute Ms. Kassenoff, and made a recent inquiry of the District Attorney's office as to that fact, because of the strong possibility that the assigned prosecutor, who the Court now knows was Ms. Paska, would be called as a witness in the custody trial. As stated by the parties (See NYSCEF Doc. No. 2307) and confirmed by Ms. Paska in her affirmation in connection with this application, the children were interviewed in connection with the prosecution of their mother by the Westchester Children's Advocacy Center. The circumstances surrounding their interview, and the role of the District Attorney's office, is a factual issue which has been raised by the parties and relates directly to the custody trial. Consequently, it is very likely that Ms. Paska will be called as a witness.

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<sup>7</sup> The allegation in the misdemeanor complaint alleged police observation of Ms. Kassenoff entering her vehicle in the Village of Larchmont within one mile of the residence of the protected parties. There is no allegation that the children were present or otherwise were witnesses.

Moreover, the AFC has minimized her contact with the ADA investigating the matter, Ms. Paska, who she later hired, in her Affirmation in opposition to this motion, stating: "I had no interaction with the children and the D.A.'s office" (see NYSCEF doc. 2623). As pointed out by Ms. Kassenoff, the AFC's billing records documented that she had a conference with the ADA lasting 42 minutes (.7 hour) on January 27, 2022, and emailed with her on February 3, 2002, and again on February 8, 2022 (NYSCEF doc. 2595 and 2596).

In fact, the issue of the DA's office and their involvement in this case has been raised again recently. It is alleged that in or about August of 2022, a Child Protection Services (CPS) investigation was initiated against Ms. Kassenoff that involved another interview of the subject children. Ms. Kassenoff has accused Mr. Kassenoff of lodging the complaint and she has requested that the Court order CPS to reveal the source of the report. Mr. Kassenoff has denied his involvement in this matter. Mr. Kassenoff's counsel responded by letter to this Court, that:

To the extent the Court can order CPS to "reveal the source of the (recent) report," we have no objection to such an order, as Mr. Kassenoff did not make the report, nor did anyone on his behalf. Being that I know who did make the report, I feel obligated to disclose that information to the Court: it was the Westchester County District Attorney's Office who made the referral. I know this because I was told by the investigator who made the report. I will leave it to them to disclose the circumstances or the reasons, and should the Court wish to order a Court Ordered Investigation, I have no objection. The Westchester County DA's office recently became involved in this matter because Ms. Kassenoff has made one or more complaints against Mr. Kassenoff and me. (See NYSCEF Doc. No. 2505).

Ms. Paska was not in the employ of the DA's office when this recent issue of the CPS report came to the attention of the Court. However, it was based on these factual issues that will likely necessitate testimony from the DA's office that the Court felt it



needed to inquire directly to the DA's office as to which ADA had handled the investigation of Ms. Kassenoff's criminal case. The Court's inquiry regarding the closed criminal case was made to Frederic Green, Esq, the Division Chief of the Special Prosecutions Division, on September 1, 2022, via email. His answer, on September 2, 2022, was that it was Ms. Paska who had handled the investigation.<sup>8</sup>

Ms. Paska's direct involvement in the prosecution of the wife in the criminal case that involves factual issues relevant to a custody determination, was not previously disclosed to the Court by Ms. Most before the Court made an inquiry. It would seem that Ms. Paska and Ms. Most knew of Ms. Paska's involvement in the prosecution of Ms. Kassenoff, but that the Court and Ms. Kassenoff did not (based on Ms. Kassenoff's affidavit in support of this application).<sup>9</sup>

The present circumstance is that the AFC employs an attorney in her small firm that is likely to be called as a witness in the matrimonial case, which has created an apparent conflict of interest, and an appearance of impropriety.

(a) Conflict of Interest

The Rules of Professional Conduct (22 NYCRR 1200, et al), Rule 1.11, entitled Special Conflicts of Interest for Former and Current Government Officers and Employees, provide:

(a) Except as law may otherwise expressly provide, a lawyer who has formerly served as a public officer or employee of the government:

(1) shall comply with Rule 1.9(c); and

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<sup>8</sup> To be clear, the Court is not suggesting that Ms. Paska has acted inappropriately in her capacity as ADA.

<sup>9</sup> While Mr. Dimopoulos would have known that Ms. Paska was the ADA handling the investigation, he did not state one way or the other whether he knew Ms. Most had hired Ms. Paska.

(2) shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. This provision shall not apply to matters governed by Rule 1.12(a).

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and  
(iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

(c) Except as law may otherwise expressly provide, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person.

Under the above rule, it is clear that Ms. Paska could not herself represent the Kassenoff children, as she could not “represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee,” unless the appropriate government agency gave its informed consent, confirmed in writing, to the representation. Thus, even considering that Ms. Paska has represented she does not do work as an AFC, she would nevertheless be precluded from representing these children if she did, as there was never any written consent.

As the Rules further provide, “[w]hen a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter” unless further steps are taken. Here, there were no screening procedures identified by the AFC that would

prevent the flow of information about the matter between Ms. Paska and the others in the firm. As noted in the motion to disqualify the AFC, Most & Schneid PC is a small two partner firm who has had, at most, two associates at any given time.

(b) Use of Confidential Government Information

There is also a substantial risk that Ms. Paska, as the ADA who prosecuted the wife for violating the order of protection in this matrimonial case, was privy to confidential information regarding the wife and /or the parties.

Under Rule 1.11, the term “confidential government information” means information that has been obtained under governmental authority and that the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public (Rules of Professional Conduct 22 NYCRR 1200, et al, Rule 1.11).

As stated in her motion seeking to dismiss the criminal charge as an ADA (see NYSCEF doc. 2594), and in her affirmation in connection with this motion, Ms. Paska interviewed numerous witnesses, reviewed transcripts of the matrimonial proceedings, and had a phone call with the AFC in connection with the criminal proceeding. It is not clear that all of this information was in fact provided to the parties in this case, as some of this information may be outside the scope of Criminal Procedure Law section 245 discovery requirements, and some may be confidential (as further discussed below).

(c) Appearance of Impropriety

The situation described above, where the former ADA who prosecuted the wife is now employed as an associate by the AFC in the matrimonial case, has resulted in an appearance of impropriety under the circumstances of this case. The AFC here has

consistently taken a position advocating against the mother in terms of her visitation with the children and had previously substituted her judgment for them at an earlier point when they had expressed that they wanted to live with their mother.

A significant issue presented in this case is the contrast between the AFC, who states that the children do not want any visitation with their mother, and the visitation supervisor, a social worker, who reports very positive supervised interactions between the mother and children. This set of circumstances only serves to bolster the appearance of impropriety given by the AFC's hiring of the ADA who prosecuted the mother, as the associate may very likely have confidences with regard to the mother's criminal case, which was dismissed and sealed. For example, unfounded CPS reports and the documentation related to such unfounded reports are sealed, however, they may be made available to an assistant district attorney prosecuting a case (see Soc. Serv. Law § 422 (5)(v)). Whether or not it is true that Ms. Paska actually obtained any confidential information in the course of prosecuting the wife, there nevertheless exists an appearance of impropriety based upon the fact that as a former ADA prosecuting the case against the wife, she would have necessarily had access to any such information (see Nemet v Nemet, 112 AD2d 359, 360 (2d Dept 1985); In re Isaiah Dejohn S., 37 AD3d 725 (2d Dept 2007); see also Galanos v Galanos, 20 AD3d 450 (2d Dept 2005)).

While the Court is cognizant that the appearance of impropriety, standing alone, would not be a sufficient basis upon which to remove the AFC (see Lovitch v Lovitch, 64 A.D.3d 710, 711 (2d Dept 2009), there are many other factors at play in this matter as discussed herein. The appearance of impropriety is only one factor the Court has considered in reaching a determination of this issue.

## 2. The AFC's Violation of the Witness-Advocate Rule

In addition to the concerns already addressed, this Court finds it appropriate in these circumstances to grant Ms. Kassenoff's motion to remove the AFC due to her alleged violation of the witness-advocate rule, whereby it is alleged she has acted as a witness against the mother in these proceedings.

The rule against an advocate becoming a witness in the litigation is applicable to Attorneys for Children as provided in Rule §7.2 of the Rules of the Chief Judge, which states: "(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation" (22 NYCRR §7.2(b) [emphasis added]).

This Court has had concerns with regard to the AFC's repeated statements made to the Court, for no apparent reason other than to denigrate the mother to the Court<sup>10</sup>. The AFC has stated in a letter to the Court dated August 22, 2022, (see, e.g., NYSCEF doc. 2504) that the mother has "made complaints about both Judge Koba and Judge Lubell," Judges that have previously presided over this matrimonial matter. Again, in a

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<sup>10</sup> As previously noted by this Court in its Decision and Order on Motion Sequence #57, over the course of these proceedings, it has become obvious to the Court that there is an exceedingly hostile relationship between the mother and the AFC. Without a doubt, Ms. Kassenoff's behavior has been at many times, unduly aggressive and provocative. The AFC has denied any particular hostility towards the mother. However, her claim is belied by circumstances surrounding this case. There is an ongoing dispute and litigation over the reasonableness of the AFC's fees, which have been challenged by the mother. The AFC has alleged provocative and litigious behavior by the mother, towards her and the children's therapists. The mother has alleged that the AFC has improperly aligned herself with the father and has manipulated the children against her. This is just a small sampling of the issues between the mother and the AFC that have been routinely raised. There has been voluminous letter and email correspondence sent to the Court, as well as statements made by the mother and the AFC regarding the other during court appearances, demonstrating they each have strong negative feelings toward the other.

letter dated August 23, 2022, (See NYSEF doc. No. 2134), she stated that, "Judge Lubell previously informed us that Mrs. Kassenoff has filed judicial grievances against both himself and Judge Koba" (See NYSCEF doc. No. 2509). She further stated that Ms. Kassenoff had "destroyed the reputation" of the forensic evaluator, Dr. Marc Abrams (see NYSCEF doc. 2504). Dr. Abrams has been removed from the Panel of Mental Health Practitioners approved by the Second Department, for reasons unknown to the Court. In addition, the Court has no independent information as to whether the mother made complaints about other Judges. However, this Court believes, whether true or not, that this hearsay information only serves to denigrate the mother and has no bearing on the issues in this case.

The AFC has also specifically referred the Court to, and provided copies to the Court, of the mother's postings on the mother's Facebook page, regarding the AFC (see, e.g., NYSCEF Doc. No. 2509). The AFC claimed she was doing so because of the effect on the children, yet she never raised any issue with the fact these young children, who are in the sole temporary custody of the father, have seemingly unsupervised access to Facebook.

It is also concerning that the AFC repeatedly refers to the mother as having a "mental illness" in letters to the Court (See, e.g., NYSCEF Doc. No. 2569; NYSCEF doc. 2428; NYSCEF Doc. No. 2134; NYSCEF Doc. No. 2509). The mother in this case has no prior history of a mental illness, and there is a report from her treating therapist, a psychiatrist, in the record stating she has no clinical mental health issues (See NYSCEF Doc. No. 2065). The only professional that diagnosed the mother with any mental health problem is the prior forensic evaluator in this case, who, as noted, has since been

removed from the Panel of Mental Health Practitioners approved by the Second Department<sup>11</sup>. He had opined she had an “unspecified personality disorder,” a diagnosis which has not, to the Court’s knowledge, been made by any other professional before or since. The Court recognizes that Ms. Most has attributed those remarks to previous Judges in this matter and this Court has no reason to doubt that the statements were made. However, the evidence in this regard is inconclusive, and it seems that the AFC’s reference to the mother’s “mental illness” is reflexively and repeatedly included her correspondence to the Court regardless of the context.

“After an appropriate inquiry, it is entirely appropriate, indeed expected, that [an attorney for the child] form an opinion about what action, if any, would be in a child’s best interest” (Matter of Carballeira v Shumway, 273 AD2d 753, 756 (3d Dept 2000), quoting Besharov, Practice Commentaries, McKinney’s Cons. Law of N.Y., Book 29A, Family Ct. Act § 241, at 218–219). However, “[An] attorney for the child [is] not an investigative arm of the court” and should not submit documents to the Court which include non-record facts and hearsay, which in this case, amounted not only to an ad hominem attack on the mother’s character (see Cervera v Bressler, 50 AD3d 837, 840–41 (2d Dept 2008)), but to her essentially acting as a witness against the mother.

### 3. The Children Should Have Separate Counsel Based Upon their Separate Circumstances

This Court has believed from the outset of this matter that the oldest daughter, Ally should have her own attorney. It is clear that Ally, who is the only adopted child of

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<sup>11</sup> This Court has ordered an updated forensic evaluation with a different provider, which remains pending.

the family, has a diagnosed conduct disorder resulting in many behavioral problems, which has been previously acknowledged by both parents (see NYSCEF doc. 2078). Part of the documented history of her disorder is that she often lies indiscriminately, and changes her position, and thus she may require more focused meetings with a separate attorney to ascertain her true wishes. She had a separate therapist apart from the other two children throughout the case.

“The Code of Professional Responsibility and existing precedent, with rare exception, require that an attorney who undertakes the joint representation of two parties in a lawsuit not continue as counsel for either one after an actual conflict of interest has arisen. Code of Professional Responsibility, EC 5–15” (Matter of H. Children, 160 Misc2d 298, 300 (Fam. Ct. Kings Co., 1994); see 22 NYCRR 1200.24).

Given this acrimonious, heavily litigated matrimonial proceeding, which has generated such an extreme level of animosity between the parents, every effort must be made to allow each child to speak with their own voice as to visitation and custody issues. The Court cannot be certain in this highly litigious matter that the children are not causing undue influence on each other, or being influenced by what they may believe others want to hear. The Court finds that the best course of action is to appoint a new AFC for each child, to ensure that each of them may express their independent views to the Court (Corigliano v Corigliano, 297 AD2d 328, 329 (2d Dept 2002) [the potential conflict of interest in the law guardian's continued representation of the subject child warrants the appointment of an independent law guardian]).



For all of the above stated reasons in their totality, this Court grants the motion by the wife to remove the AFC. The Court will appoint three new AFC's to separately represent each child.

This constitutes the Decision and Order of this Court.

The Court considered the following papers on this motion: Motion seq. 51 – Defendant's Notice of Motion dated Feb. 10, 2022, Affidavit in support, Exh. 1-6, Exh. A-Z; AA-ZZZ. Motion seq. 62 – Defendant's Notice of Motion dated Sept. 6, 2022; Memo of Law; Affidavit in support, Exh. A-L; Affirmation in support. Plaintiff's Affirmation in opposition dated Sept. 13, 2022, Exh. 1-3. AFC's Affirmation in opposition dated Sept. 14, 2022; Exh. 1-26; Affirmation of Ms. Paska; Memo of Law; Defendant's Reply Affidavit dated Sept. 21, 2022, Memo of Law, Exh. A-B., Affirmation of Mr. Frisch.

Dated: October 4, 2022  
White Plains, NY



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Hon. Susan M. Capeci, A.J.S.C.