

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D17024  
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Submitted - October 26, 2007

ROBERT W. SCHMIDT, J.P.  
REINALDO E. RIVERA  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

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2007-02177

DECISION & ORDER

In the Matter of Marvin Q. (Anonymous).  
Nassau County Department of Social Services,  
petitioner-respondent; Rafael Q. (Anonymous),  
appellant, et al., respondent.  
(Proceeding No. 1)

In the Matter of Nashly Q. (Anonymous).  
Nassau County Department of Social Services,  
petitioner-respondent; Rafael Q. (Anonymous),  
appellant, et al., respondent.  
(Proceeding No. 2)

(Docket Nos. N-1705/06, N-1706/06,  
NA-1240/06, NA-1241/06)

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Thomas F. Liotti, Garden City, N.Y., for appellant.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson of counsel), for  
petitioner-respondent.

In related child abuse and neglect proceedings pursuant to Family Court Act article 10, Rafael Q., the maternal uncle of the subject children, appeals from an order of the Family Court, Nassau County (Schwartz Zimmerman, J.), dated January 24, 2007, which, inter alia, granted the Law Guardian's motion to disqualify his attorney from representing him in the proceedings.

November 27, 2007

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MATTER OF Q. (ANONYMOUS), MARVIN  
MATTER OF Q.(ANONYMOUS), NASHLY

ORDERED that the order is affirmed, with costs.

The disqualification of an attorney is a matter which rests within the sound discretion of the court (*see Campolongo v Campolongo*, 2 AD3d 476; *Olmoz v Town of Fishkill*, 258 AD2d 447; *Fischer v Deitsch*, 168 AD2d 599). Although “[a] party’s entitlement to be represented in ongoing litigation by counsel of his or her own choosing is a valued right which should not be abridged,” such right will not supersede a clear showing that disqualification is warranted (*Campolongo v Campolongo*, 2 AD3d at 476; *see Horn v Municipal Info. Servs.*, 282 AD2d 712).

In the case at bar, the appellant’s attorney, whose office represented the appellant in the Family Court, violated Code of Professional Responsibility DR 7-104(A)(1) (*see* 22 NYCRR 1200.35[a][1]) by, without the Law Guardian’s knowledge and consent, allowing members of his law firm to interview the subject child and by procuring an affidavit from the child regarding the pending Family Court proceedings. “The appointment of a Law Guardian to protect the interests of a child creates an attorney-client relationship, and the absence of the Law Guardian at the subject interview constituted a denial of the child’s due process rights” (*Campolongo v Campolongo*, 2 AD3d at 476; *see also Matter of Samuel H.*, 208 AD2d 746, 747; Family Ct Act § 241).

Accordingly, under the circumstances of this case, there was a clear showing that disqualification was warranted. Thus, the Family Court providently exercised its discretion in granting the Law Guardian’s motion to disqualify the appellant’s counsel. The court also properly precluded use of the child’s affidavit in the Family Court proceedings (*see Campolongo v Campolongo*, 2 AD3d at 476).

The appellant’s remaining contentions are without merit.

SCHMIDT, J.P., RIVERA, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court