

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

D31616  
O/kmb

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Submitted - May 20, 2011

REINALDO E. RIVERA, J.P.  
PETER B. SKELOS  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

2010-09154

DECISION & ORDER

In the Matter of John McGrath, appellant,  
v Cheryl D'Angio, respondent.

(Docket Nos. F-16488-09, F-2506-10)

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John McGrath, East Northport, N.Y., appellant pro se.

Mark A. Peterson, Smithtown, N.Y., for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals, as limited by his brief, from so much of an order of the Family Court, Suffolk County (Kelly, J.), dated August 19, 2010, as denied his objections to so much of an order of the same court (Buse, S.M.), dated March 16, 2010, as denied his motion to recuse the Support Magistrate from hearing and determining the parties' support petition and cross petition.

ORDERED that on the Court's own motion, the father's notice of appeal is treated as an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order dated August 19, 2010, is affirmed insofar as appealed from, without costs or disbursements.

Where no legal basis for disqualification under Judiciary Law § 14 is alleged, "a court is the sole arbiter of the need for recusal, and its decision is a matter of discretion and personal conscience" (*Matter of O'Donnell v Goldenberg*, 68 AD3d 1000, 1000; *see People v Moreno*, 70 NY2d 403, 405-406; *Matter of Alyssa A. [Michelle N.-Sandra N.]*, 79 AD3d 740, 741; *Gihon, LLC*

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*v 501 Second St., LLC*, 77 AD3d 709). In this case, the father failed to establish that any alleged bias by the Support Magistrate affected her ultimate determination to his detriment. Thus, there is no basis for finding that the Support Magistrate improvidently exercised her discretion in denying the father's motion to recuse herself (*see Schwartzberg v Kingsbridge Hgts. Care Ctr., Inc.*, 28 AD3d 465, 466; *Pourooshab v Pourooshab*, 4 AD3d 404, 405; *Matter of Malinda V.*, 221 AD2d 549, 549-550; *Matter of Johnson v Hornbliss*, 93 AD2d 732, 733; *Matter of Katz v Denzer*, 70 AD2d 548, 549; *State Div. of Human Rights v Merchants Mut. Ins. Co.*, 59 AD2d 1054, 1056). Accordingly, the Family Court properly denied the father's objections to that part of the Support Magistrate's order.

RIVERA, J.P., SKELOS, HALL and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court