

September 4, 2020

Via USPS Mailing

State of New York
Supreme Court, Appellate Division
Third Department
Office of Attorneys for Children
286 Washington Avenue Extension, Suite 202
Albany, NY 12203

Attn: Betsy R. Ruslander, Director

RE: Walker v. Walker

Index Number: 2018-261675

Formal Complaint Against
AFC Matthew Foley

Case: Walker v. Walker

Index Number: 2018-261675

Dear Ms. Ruslander:

Please find enclosed my **Formal Complaint against attorney Matthew Foley, Attorney for the Children and My Recent Reply to Mr. Foley's Email(s) in the above custodial matter.** I would hope that the AFC Office and Committee would review, investigate and take this detailed complaint seriously.

This issue of proper oversight of the Attorneys for Children under 12-B designation, by your office is also considered to be a matter of community and statewide interest (requiring proper investigation and reply). If proper investigation of the complaints is not forthcoming, then continuing damage to children from attorneys, mis-representation of minors will continue to occur; especially with 100% custodial placement (as here) of children (minors) to/with convicted felony level sex offenders.

Thank you for your courtesy and consideration in this important matter affecting not only myself and the children, but also concerning the faith and integrity of the Attorney for Children Program.

Respectfully submitted,

Alisha Walker,
P.O. Box 330
Sand Lake, NY 12153
T: 518.915.8989
w/attachments

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RENSSELAER**

LUKE WALKER,

Plaintiff,

-against-

**COMPLAINT
AGAINST
MATTHEW FOLEY
(Attorney For Children)**

Index No.: 2018-261675

ALISHA C. WALKER,

Defendant,

STATE OF NEW YORK)
) ss:
COUNTY OF RENSSELAER)

1. This complaint is filed against Matthew Foley, assigned Attorney for Children [AFC] in the above referenced child custody case involving my two children.
2. The Appellate Division of the Third Department, AFC Office and Committee needs to be made fully aware of certain irregularities, conflicts, discrimination and lack of proper representation in this matter as more fully documented herein.
3. The appointed Attorney for the Child, under the Attorney For Children [AFC] [12-B] program, should be removed, and a new AFC or additional supervising attorney for the Child(ren), should be appointed and the matter fully investigated by the AFC Committee-Panel, in its oversight role of the AFC program.
4. Appointment of a new ‘non conflicted and compromised’ Attorney for the Child from the approved Rensselaer County AFC Panel list.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RENSSELAER**

LUKE WALKER,

Plaintiff,

-against-

**STATEMENT
IN SUPPORT OF
COMPLAINT
AGAINST
MATTHEW FOLEY**

Index No.: 2018-261675

ALISHA C. WALKER,

Defendant,

STATE OF NEW YORK)
) ss:
COUNTY OF RENSSELAER)

1. I am the Defendant Mother in the above referenced Supreme court case and as such I am personally familiar with the underlying facts and circumstances in this matter.
2. The attorney for the child assigned to the case is presently Matthew Foley.
3. The attorney for the child is under the supervision of the Court and of the Attorney for the Children Program of the Third Department, and subject to certain standards in representation and for avoidance of conflicts of interest, and the Attorney For Children, is to be zealous and competent in the performance of his/her said duties.
4. This case and AFC representation has certain special considerations for the justice system, for faith in its integrity in fact finding, for the integrity of the Attorney for the Child Program, and for the Court, as specifically outlined herein.

Statement of Facts:

5. I am Defendant Mother in the above referenced Rensselaer County Supreme Court case matter and as such I am familiar with the underlying facts and circumstances.

6. The attorney for the child assigned to the case is presently Matthew Foley, Esq.

7. **Attorney Foley, has multiple concurrent conflicts of interest and should be disqualified** as attorney for the child in this case due to the following:

8. Attorney Foley is currently the subject of a Federal civil rights lawsuit under 42 USC 1983; C.A. No.: 1:19-CV-1288 (LEK)(CFH), filed by defendant mother on her and her children's behalf, and accordingly Mr. Foley is in a conflict of interest representing the children of the defendant mother and plaintiff in the federal action against Mr. Foley in the above titled action.

9. Attorney Foley has previously expressed his invidious religious discrimination and animus against the Defendant Mother, a practicing Buddhist, falsely claiming that she would not properly care for her children due to her belief in 'karmha'.

[Exhibit A]

10. Under the Rules of the Chief Judge, sect. 7.2 (b) & (d):

(b) The attorney for the child is subject to the ethical requirements applicable to all attorneys, including but not limited to, constraints on ex-parte communication; disclosure of client confidences and work product; conflict of interest; and becoming a witness in the litigation.

(d) In other types of proceedings [other than JD and PINS], where the child is the subject, the attorney for the child must zealously advocate the child's position.

A-4. The Use of Substituted Judgment:

"In all circumstances where an attorney is substituting judgment in a manner that is contrary to a child's articulated position or preferences or when the child is not capable of expressing a preference, the attorney must inform the court and the child that substituted judgment is the basis upon which the attorney will be advocating the legal interests of the child."

11. In formulating substituted judgment, the attorney:

(1) Must conduct a thorough investigation, including interviewing the child, reviewing the evidence, and applying it against the applicable legal standard applicable to the particular stage of the proceeding; and

(2) Should consider the value of consulting a social worker or other mental-health professional to assist the attorney in determining whether it is appropriate to override the child's articulated position and/or to assist the attorney in formulating a legal position on behalf of a child who is not competent.

12. The children have expressed many many times that they wanted to be with their mother more and did not want to leave during the very sparse and sporadic periods when plaintiff father allowed the children to be with and parented by their mother.

13. Attorney Foley, lied when he expressed that the defendant mother would not take care of the medical needs of her children, Mr. Foley when speaking to the court on May 31, 2019 [page 4 & 5 of transcript]:

Mr. Foley: *"I was very concerned about medical issues, the belief...the disregard of medical treatment in favor of karma or that kind of thing. And the one child, Trey is apparently developmentally delayed..."*

The Court: *"when was designation and need for assistance made"?*

Mr. Foley: *"I don't know if there was an actual diagnosis that the child's developmentally delayed...I guess he's underweight, small, not verbally up to speed or whatever."*

The Court: *Is reporting something that she [Ms. O'Connor] got from a pediatrician?"*

Ms. Walker: *"There's no reports. I take the kids to the doctors when needed."*

14. Mr. Foley expressed to the court his various unsupported and prejudicial suppositions that have resulted in the children being essentially disenfranchised from their mother without cause, and for the drastic unsupported order of supervised visitation [parenting time] to only occur when the plaintiff father deemed it in his best interests, and utilized as a bargaining chip.

15. Mr. Foley, also knew that there was a substantial divorce litigation involving the marital assets and estate, and that the plaintiff father would be able to use the children as pawns in order to try to crush and intimidate the defendant mother.

16. At a court appearance on December 20, 2019, when asked by defendant mother, why Mr. Foley was meeting and communicating only in ex-parte manner with plaintiff father's lawyers [Ms. Silva], Mr. Foley brazenly stated to defendant mother, that 'he could talk to whomever he wants to.'

17. It is noteworthy, that Mr. Foley has never met with the mother or her family concerning the children's needs and best interests.

18. Attorney Foley is a member of the NYS Bar Association and as such, is subject to its Professional Standards and Ethics, especially regarding direct conflicts [and perceived conflicts] of interest in client representation.

19. The attorney for the child [AFC] is supposed to be an independent unbiased party, free of bias, and conflicts of interest, in representing minor children in child custody matters being heard before the court; and is subject to standards, guidelines, and ethical responsibilities of a lawyer in the NYS AFC 18B assigned program.

20. Two evaluations were performed as to the defendant's mother, [non were performed on the plaintiff father]. The first court approved evaluation was performed by HAS and recommended for defendant mother to continue to have custody or for there to be shared parenting with co-parent counseling.

21. Upon information and belief, no recommendation by either evaluator was put forward of any 'risk of serious or imminent harm' to the children while in the parental custodial care of the defendant mother.

22. Attorney Foley, has wrongly misused his power, lied to the court, substituted his opinion for fact, in supporting supervised parenting time – visitation, only with the permission of the plaintiff father, without reason, and thereby interfering with and being unfair to the children and their proper relationship [as expressed] with their mother.

23. To restate, Attorney Foley has **Never met with the mother or any members of her family, or ever conducted a home visit at the mother's marital residence, in dereliction of his responsibilities in fair representation of his clients, my children.**

24. Attorney Foley, has on multiple occasions, appeared unprepared at hearings on the parenting time issue, and then claimed that he was unprepared for discussion on parenting time issues, which was his mandate by his appointment as Attorney for the Children [AFC].

25. Attorney Foley, has rarely met with his clients, my two minor children, and only met with them recently when Judge Rivera had to directly order him to conduct such a meeting with his clients. [his letter to the court did not state any client preference, only that the plaintiff father, was to have all power, decision making and control over the defendant mother's access to her children.

26. Attorney Foley, recently met with my children, and then without stating anything as to their preference, in a terse unsupported letter to the court [7 lines one paragraph] devoid of particulars, took a biased and discriminatory position that a known felony sex offender, who sleeps with my 6 year old daughter, takes them to sex boudoir shop, and who expressed that I should be able to parent as little as possible, was a continuing good custodial parent and that supervised visitation, only with permission of the plaintiff father, should in his opinion continue.

27. As noted, Mr. Foley is defendant in federal lawsuit, and based upon the above conflict of interest and ancillary considerations and pattern of behavior, the current Attorney for the Child, **Matthew Foley should be disqualified and an independent competent and un conflicted attorney for the children be appointed to represent their overall best interests**

POINT ONE:

Lawyer Conflicts Of Interest:

28. Attorney Foley has **inherent concurrent conflicts of interest** [COI] and should be disqualified as attorney for the child in this case due to the following:

29. Due to certain documented unorthodoxies in this case matter, and acting in my role as mother safeguarding the interests of my children and of certain constitutional rights that have been violated, I was forced to file a serious detailed civil right action against Mr. Foley and others under 42 USC 1983. [Civil Action No.: 1:19-CV-1288 (LEK)(CFH)]. **[Exhibit A]**

Notice of Conflict [Unanswered] As Sent To Mr. Foley:

30. “In your reply to my lawsuit against you, you claimed certain immunities but have not as of yet in your defendant’s role argued against any of the documented allegations concerning certain protected constitutional rights [religious and otherwise] of parents to their children and of children to their parent’s care and association which are most fundamental liberty interests.”

31. “Upon Information and direct knowledge, you have made certain un-supported ‘ad hominum attacks’ directed against me personally that are part of the court record. [Examples on record of both implicit and explicit bias]”.

32. “Upon Information and direct knowledge, you have shown disrespect and discrimination against my Buddhist religion. “

33. “You have personalized the case, making you a potential witness in the case.”

34. “As a defendant named in a federal action, I have been advised that you are in a direct conflict of interest in the matter and accordingly need to remove yourself according to standards of the Appellate Division, AFC manual – AFC Ethics Standards, NYS Lawyers Code of Professional Responsibility, American Bar Association standards, as well as provided in case law. I note that the previous judge and attorney for plaintiff did the right thing by stepping aside when named in the federal lawsuit. You should do the right thing too.”

35. “I also note that you have participated in a demonstration of a lack of due process in going along with supervised minimal custodial parenting time (disenfranchisement) between myself and my/our children. No facts were brought forth that the children were in any harm’s way, only hearsay, inuendo, and rhetoric were provided without supporting evidence, to essentially disenfranchise the children from their rightful parent.”

36. “Additionally, there are numerous circumstances that you have not communicated with the children in claiming to represent them, and at a hearing appearance on November 15th, 2019 before the new Judge Rivera, you claimed not to be prepared to put forth any legal argument on behalf of your clients, the minor children.”

37. “Due to the above factors, I strongly request that you choose to do the right thing in stepping away, and allowing an impartial lawyer to take over the important and solemn role of attorney for the children in this child custody case. If necessary, I will follow-up with a Motion for Removal for cause as iterated above, per existing conflict of interest rules, guidelines and for reasons as specified and put forward in previous 42 USC Federal filing etc.”

38. Mr. Foley did not appropriately inform the court of his direct and indirect perceived conflict of interest in this matter as would be required by any lawyer so situated. As I had to bring this issue to the court’s attention. **[Exhibit B]**

POINT TWO:

Collusion – Animus:

39. According to my research, as contained in the authorities reviewed [Attachment - Table of Authorities], and other reviewed source documents, **the Attorney for the Child is supposed to be an independent party, free of political loyalties and personal bias or prejudice in child custody matters being heard before the court.**

40. From Section 7.2 of the Rules of the Chief Judge; It 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.**

41. Upon being served the federal lawsuit papers, **Mr. Foley did not come forward to address the issue of his [previously undisclosed] conflicts of interest to the Court.**

42. Additionally, the attorney for the child has failed to properly represent the children's expressed interests, furthermore, Mr. Foley stated at one of the last two hearings, that he was 'unprepared' to discuss anything about the case; although having knowledge weeks in advance prior to the last two hearings, **and Mr. Foley violated a number of AFC representation standards. [Ref: Table of Authorities] Including misstated innuendo, speculation and insinuations about my son Trey.**

43. There have also been numerous secretive conversations and meetings between Mr. Foley, both of plaintiff Luke Walker's attorneys, Ms. Silva [and Drescher who left case due to conflict], and Luke Walker to the exclusion of the Defendant Mother thereby creating new questions of collusion and conflict of interest in the matter before the court.

POINT THREE:

Refusal to Meet or Conduct Home Visit or Interview Maternal Family:

44. Attorney Foley has substituted his voice for that of my two children, and not provided anything in regards to our children's position on parenting time, and Mr. Foley only interviewed the children when finally ordered to do so by the court.

45. I have taken care of our children without any problem since their birth and thereafter, until a series of misstatements and seemingly choreographed slander and smearing by the Colwell law firm, Mr. Foley and plaintiff Luke Walker, in this divorce action filed by the plaintiff father.

46. Attorney Foley has inserted himself as a biased voice for my 4-year old son and that of my 7-year old daughter with various false claims and speculations.

47. Further, Attorney Foley has not even bothered to interview me, my family or my other daughter or those knowledgeable of the family parental dynamics as would be normal practice under the AFC guidelines.

48. Attorney Foley, has behaved towards me and our children in a **very unprofessional way; as further indication of his bias and clear spoken animus directed towards me as established in the court record.**

POINT FOUR:

Misfeasance/Incompetence – Not Representing Children’s Expressed Interests:

49. The Attorney for the Child, Matthew Foley, should be removed from his AFC representation in this child custody matter.

50. Based upon the **above grounds, Conflict of Interest [COI] ethical considerations, and improper practice and behaviors** as exhibited, the current Attorney for the Child, Matthew Foley, should be disqualified.

51. Mr. Foley has never told the court what the children would like to see as far as parenting time access to their natural mother, in this divorce and child custody matter.

52. Due to the un called for disenfranchisement as suggested by Mr. Foley, I have literally had to ‘grovel and beg’ to be able to see and have our children for very limited and sporadic supervised parenting time, in contravention of their needs and wants, and law, and yet Mr. Foley has not been honest with the court concerning the children’s true wishes and needs. [siding as he has with the plaintiff father and his attorneys]

POINT FIVE

Invidious Religious Discrimination:

53. As described in my civil rights action filed against Matthew Foley, and per the court records, Mr. Foley has expressed his prejudicial bias [explicit and implicit], disdain and dis-respect for my Buddhist faith.

54. Mr. Foley knowingly lied when he claimed [speculated] to the court that I would not take the children to the doctor, when he knew very well that in a previous hearing that I was wrongly accused of bringing my son Trey to the doctor for diagnosis and treatment of a large bulge on the back of his knee, as diagnosed as a Bakers Cyst. I had previously brought the children, since their birth, to the pediatrician and plaintiff father admitted that he had never brought the children to the doctors.

55. I realize that it is a seemingly rare remedy for the dismissal and substitution of an Attorney for the Child [AFC], but an accurate analysis of the totality of the facts and circumstances of this custody case, as documented herein, require that this step be taken as being in the interests of justice, the children’s interests and per the reviewed referenced table of authorities.

56. An independent attorney for the child(ren), free of such conflicts and loyalties and unprofessional conduct, should be appointed; And that this is believed to be in the children's best interests, for the children to have unbiased, unconflicted and independent legal representation in the matter.

WHEREFORE, I respectfully request that the Appellate Division of the Third Department – Office For the Attorney for Child(ren) Program, take proper measures to investigate and remove Matthew Foley for his many acts of misfeasance, inactions, and unorthodox behavior concerning proper representation of the children as documented herein; and that the Committee exercise its proper role in supervision and discipline to remove the current attorney for the child from this case, due to various conflicts of interest, for cause for the reasons provided, and for the appointment of an independent attorney for the child, and for such other and further relief as the AFC Office - Committee may deem just and proper.

Alisha C. Walker
P.O. Box 330
Sand Lake, NY 12153
Tel.: 518.915.8989

Table of References:

1. New York State Bar Association – Code of Professional Standards
2. NYS Ethics of Attorney for Children
3. American Bar Association – Model Rules of Conduct
4. Attorney for Children – Law Guardian Manual
5. NYSBA Committee on Children and the Law, Standards for Attorneys Representing Children 2015
6. Attorney for the Child – Rule of the Chief Judge and Summary Responsibilities
7. Third Department – Office of Attorneys for Children Administrative Handbook
8. Touro Law Review Article ‘Defining the Role of Law Guardian in New York State by Statue, Standards and Case Law. [2002]

Exhibits

Exhibit A - Civil Rights Discrimination Lawsuit against
Matthew Foley, 42 USC 1983 [C.A. 1:19-CV-1288
(LEK)(CFH)]

Exhibit B - Correspondence to Matthew Foley

Exhibit C - Defendant Matthew Foley Reply Affirmation

Exhibit D - Transcript Pages - Email

Exhibit E – Attorney and AFC Regulation Guidance Materials