

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

JUSTIN F., DOUGLAS FREY	:	
	:	
Plaintiffs,	:	
	:	No. 3:04CV1149 (MRK)
v.	:	
	:	
PHILLIP MALONEY, ET AL.,	:	
	:	
Defendants.	:	

**RULING AND ORDER**

Presently pending before the Court are a number of motions. Having considered the motions and the parties' briefs, the Court enters the following rulings and orders:

1. Plaintiff's Motion for Default Entry [**doc. #20**] as to Crystalline Jurzyk, Mark Jurzyk, and Karissa T, is DENIED as moot given that these defendants appeared through counsel on November 2, 2004 [doc. #22].

2. Defendants' Motion to Disqualify Counsel [**doc. #10**] is GRANTED in part and DENIED in part. The Court grants the motion as to Douglas Frey's *pro se* representation of his minor son for two reasons. The first reason is that "a lay person may not. . . appear on behalf of his or her own minor child." *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998) (internal quotations and citations removed) (explaining that "because *pro se* means to appear for one's self, a person may not appear on another person's behalf in the other's cause"). A parent may sue on behalf of his or her minor child as a next friend only if "the parent is represented by counsel and has no interests that conflict with those of the child." *Bullock v. Dioguardi*, 847 F. Supp. 553, 560 (N.D. Ill. 1993). This is because, "[t]he choice to appear *pro se* is not a true choice for minors who under state law, cannot determine their own legal actions." *Cheung v. Youth*

*Orchestra Foundation of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990). And it is well-settled under Connecticut law that “a child may bring a civil action only by a guardian or next friend whose responsibility it is to ensure that the interests of the child are well represented.” *Newman v. Newman*, 235 Conn. 82, 95 (1995) (citing *Cottrell v. Connecticut Bank & Trust Co.*, 175 Conn. 257, 261 (1978)). The second reason that Mr. Frey must be disqualified as counsel for his son is that Mr. Frey is likely to be called as a witness. As a witness in the case, Mr. Frey cannot also serve as an advocate for another. *See* D. Conn. L. Civ. R. 83.13. Although Mr. Frey denies the possibility that he will testify as a witness, allegations in the Complaint itself reveal that Mr. Frey will be needed as a witness to present material facts in support of these allegations. For these reasons, Mr. Frey may not represent his minor son *pro se*. Mr. Frey shall have until **January 24, 2005** to obtain separate counsel for his minor son Justin F.

However the Court reaches a different conclusion regarding Mr. Frey’s self-representation. *Pro se* plaintiffs necessarily play the simultaneous roles of attorney and witness and this is an accepted aspect of the right to self representation. *See O’Reilly v. New York Times Co.*, 692 F.2d 863, 870 (2d Cir. 1982) (the ability of a *pro se* plaintiff to “play two roles, one as witness and one as advocate, applies in every case of self-representation; if this is an evil, it is one which the first Congress was willing to countenance and which none of its successors has seen fit to remedy”) (internal quotations and citations removed). Accordingly, most courts have held that “advocate-witness” rules similar to the Rule 83.13 of this District’s Local Rules do not apply to *pro se* plaintiffs. *See e.g., Wolk v. Cohen*, No. CIV.A. 94-5096, 1997 WL 197303, \*2 (E.D. Pa. Apr. 21, 1997) (collecting cases). Therefore, the Court denies Defendant’s Motion to Disqualify as to Mr. Frey’s self representation.

3. Defendants' Request to Argue the Motion to Disqualify [**doc. #31**] is DENIED as moot in light of the Court's ruling on Defendants' disqualification motion.

4. Finally, since Defendants' Motion to Dismiss [**doc. #19**] concerns Justin F. as well as Mr. Frey, the Court will not address this motion until counsel has appeared for Justin F. and has had an opportunity to determine if he or she wishes to file any further pleadings.

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United States District Judge

Dated at New Haven, Connecticut: December 21, 2004.