New York's court-appointed attorney-for-the-child system creates a structural risk to independent advocacy because court institutions control individual appointments, continued panel eligibility, evaluation, and compensation. In four of the fourteen principal cases examined in this study, attorneys aligned with an existing court or institutional outcome while also failing to develop or faithfully advance the child's position. These cases are consistent with possible institutional accommodation. However, neither the published decisions nor the official institutional documents establish that appointment dependence caused any individual attorney's conduct. The evidence therefore supports a finding of structural risk and plausible professional incentives rather than direct proof of motive or causation.

# Introduction

In New York Family Court, attorneys for children are generally expected to maintain a traditional attorney-client relationship: they owe the child undivided loyalty and are supposed to advocate for the child's expressed position, except in limited situations involving incapacity or a serious risk of harm (NYSBA, 2015; 22 N.Y.C.R.R. § 7.2). Historically, however, the role has not always been so clearly defined. Attorneys for children have sometimes been expected to act not only as advocates, but also as guardians or investigators assisting the court (Somberg, 2003, pp. 529–531). This matters because these attorneys are appointed through a court-based system and often appear before the same judges alongside the same institutional actors; this creates pressures that are outlined in Galanter's (1974) theory of repeat players, which suggests that people who regularly participate in a legal system may develop professional relationships and long-term interests that shape how they behave. This paper therefore asks whether those relationships may encourage attorneys for children to accommodate the court, even when doing so could weaken their independent advocacy for the child.

# Literature Review

## Background and New York's Current Standard

Attorneys appointed to represent children have historically had an unclear role. A traditional attorney advocates for the goals chosen by the client; however, children vary in maturity and ability to understand legal proceedings. Thus, courts have sometimes expected children's attorneys not only to represent the child's wishes, but also to decide what is in the child's best interests or to investigate facts for the judge. Somberg (2003) explains that New York's former "law guardian" role often combined three separate functions, those being attorney, guardian ad litem, and investigator for the court. A big problem with this was that these roles could conflict. An attorney is expected to advocate for a client, while a guardian independently decides what is best for the child, and an investigator, by contrast, gathers information to help the court without necessarily supporting either side. Combining these roles created confusion among attorneys and judges about whether the child or the court was the attorney's primary responsibility (pp. 529–531).

Marx (2009) similarly identifies three main approaches to child representation: the best-interests model, the traditional attorney model, and a hybrid model. Under the best-interests model, the attorney recommends the outcome the attorney believes will benefit the child; under the traditional model, the attorney advises the child but follows the child's chosen position; the hybrid model combines elements of both. Marx argues that New York courts historically applied these models inconsistently (pp. 510–528).

New York later attempted to clarify the role through Section 7.2 of the Rules of the Chief Judge, which requires the attorney to "zealously advocate the child's position." If the child can make a considered decision, the attorney should follow the child's wishes even when the attorney believes another result would be better. The attorney can only take a different position when the child lacks the necessary capacity or when following the child's wishes would create a substantial risk of "imminent and serious harm" (22 N.Y.C.R.R. § 7.2(d)).

The New York State Bar Association standards support this approach; they state that the attorney should maintain a traditional attorney-client relationship, owe undivided loyalty to the child, preserve confidentiality, and advocate for the child's position (New York State Bar Association Committee on Children and the Law [NYSBA], 2015, pp. 3–4).

# Competing Models of Child Representation

A major debate in the literature concerns whether a child's lawyer should follow the child's wishes or advocate for what the lawyer believes is best for the child. Supporters of the former argue that a lawyer should treat the child as the client rather than as the subject of an investigation. Elrod (2007) argues that children should be recognized as rights-holders when decisions about custody, family relationships, or state intervention affect their lives. A client-directed attorney does more than repeat what the child says: they advise the child, explain legal options, investigate facts, and recommend possible courses of action. However, a child who has sufficient capacity should ultimately choose the goals of the representation. Elrod then warns that allowing the attorney to determine the child's best interests gives the attorney too much power. Lawyers are trained to provide legal advice and advocacy, but are not necessarily experts in psychology, child development, or family welfare. A lawyer who chooses their client's outcome may replace the child's values with their own beliefs (Elrod, 2007, pp. 889–912). Elrod describes the central dispute here as whether the attorney is bound by the client's wishes or may independently advocate for the child's best interests.

Guggenheim (2009) also argues that the roles of lawyer and best-interests adviser should remain separate. If a court needs someone to investigate the family or recommend an outcome, Guggenheim says, it may appoint a separate guardian, evaluator, or other professional. Giving those responsibilities to the child's attorney risks turning the lawyer into an assistant to the judge instead of an advocate for the child. This distinction is important, as representing a child may require the attorney to disagree with the court; the lawyer may need, in many cases, to challenge evidence, oppose a proposed settlement, object to the judge's procedure, or appeal an order, and an attorney who sees the job primarily as simply helping the judge will be less willing to take those actions.

However, client-directed representation also presents difficulties. Atwood (2011) argues that some children cannot or will not give clear instructions to an attorney; very young children may be unable to understand the case; other children may be traumatized, have limited ability in decision-making, or simply refuse to choose between parents. These children still may need an attorney who can investigate the case, protect their rights, present evidence, and explain their circumstances to the court (pp. 381–385). Atwood therefore supports a limited form of "best-interests" lawyering for children who cannot direct counsel. Interviews with Arizona judges found that some judges believed best-interests attorneys could give the court a fuller picture of the child's situation. At the same time, the judges recognized the ethical tensions that arose when an attorney recommended an outcome the child did not select. Atwood also found that the line between client-directed and best-interests attorneys could become fuzzy in actual practice (2011, pp. 399–401).

Appell (2008) raises a broader concern about attorney power: that children may be unable to monitor their lawyers or correct the way their views are presented. Attorneys may also come from different social, cultural, or economic backgrounds than their clients, and as a result, lawyers may define a child's interests through their own beliefs or through the expectations of the legal system rather than through the child's actual experiences and values (pp. 596–625).

All of these sources show that neither approach is completely simple. Strict client direction may be difficult when a child cannot give meaningful instructions; best-interests authority, however, creates a risk that the attorney will substitute adult or institutional preferences for the child's position. Under either model, the attorney must be able to exercise independent judgment rather than merely follow the preferences of the court.

# Effective Representation

The literature also distinguishes between appointing an attorney and providing effective representation. The physical presence of a lawyer in court is not enough; Somberg notes that meaningful representation requires preparation, knowledge of the facts and law, participation in hearings, presentation of evidence, and questioning of witnesses (2003, pp. 561–562). The NYSBA standards identify several duties that help define effective representation: attorneys should meet with the child, investigate the case, develop a legal strategy, participate in discovery and hearings, make appropriate motions, and present facts supporting the child's position. These standards also state that an attorney for the child is "not an arm of the court" and should not simply defer to the positions taken by parents or other parties (NYSBA, 2015, pp. 9–13).

Research involving young people emphasizes communication: Epps and Green (2021) summarized a study of 100 youth with current or previous foster-care experience and found that participants often reported poor communication with their legal representatives; youth who had more contact with their attorneys viewed their representation more positively, regardless of whether the contact occurred by telephone or in person. A later study identified communication and contact as the two most important features of effective representation (pp. 48–51).

These findings provide possible measures of representation quality, including whether the attorney met with the child, explained the proceedings, investigated independently, presented evidence, and actively communicated the child's position. However, ineffective representation may have several causes: it may result from heavy caseloads, inadequate payment, weak training, limited support staff, or institutional pressure. As such, poor performance alone does not prove that the attorney was attempting to accommodate a judge.

# Appointment Dependence and Repeat Players

Attorneys for children work within a professional system largely controlled by the courts. Children usually do not choose the lawyers appointed to represent them. Instead, judges and court administrators help determine who receives these assignments, while an attorney's continued access to appointments and compensation may depend on remaining part of the same institutional network. Marx (2009) explains that New York judges may appoint attorneys for children in several kinds of proceedings. Some lawyers serve on approved panels and receive individual court assignments. Others work for organizations that provide legal representation to children through separate institutional arrangements (pp. 495–497).

Judicial appointment, by itself, does not establish misconduct or a conflict of interest. A judge may select a particular attorney because that lawyer is experienced, available, familiar with the family, or knowledgeable about an unusual legal issue. Nor does an attorney's agreement with a judge necessarily mean that the attorney failed to advocate independently. The lawyer may genuinely believe that the judge's proposed outcome also reflects the child's position. Still, Galanter's (1974) theory of repeat players offers a useful way to examine the quieter pressures that can arise within such a system. Galanter distinguishes between "one-shotters," who encounter the legal system only occasionally, and "repeat players," who participate in similar cases again and again. Over time, repeat players gain experience, learn court procedures, build professional reputations, and develop continuing relationships with judges and other institutional actors. Those advantages can be valuable, but they may also give repeat players reasons to protect their long-term standing, sometimes at the expense of a particular client (pp. 97–100).

In Family Court, children and parents often resemble one-shotters. A single proceeding may reshape their family relationships for years, yet they may enter the courtroom with little understanding of its rules, language, or informal expectations. Judges, agency lawyers, institutional providers, and attorneys for children, by contrast, are more likely to participate repeatedly. They may appear before the same judges and work alongside the same professionals long after one child's case has ended. Galanter observes that repeat participants may form informal relationships with court officials and become concerned with preserving their credibility and professional reputation over time (1974, pp. 99–100).

For attorneys representing children, this creates at least a possible tension. Their legal duty belongs to the child. At the same time, they may have practical reasons to maintain good relationships with judges, protect their reputations, and remain eligible for future assignments. That does not mean that attorneys deliberately abandon their clients. The pressure may be subtler. A lawyer might avoid an especially forceful objection, soften a disagreement, or gradually accept the court’s interpretation of the child’s interests because challenging it feels professionally risky or unlikely to succeed.

No judge would need to make an explicit threat for this influence to matter. Attorneys may slowly learn which arguments a judge finds persuasive, which positions are viewed as unrealistic, and which lawyers are considered cooperative or difficult. They may then adjust their behavior without consciously deciding to place institutional expectations above the child’s needs. Appell’s discussion of professional and institutional norms supports this concern. Lawyers can absorb the assumptions of the systems in which they work while still sincerely believing that they are acting responsibly and in their clients’ interests (Appell, 2008).

## Gap in the Literature

Previous scholarship has examined uncertainty in the role of children’s attorneys, the conflict between client direction and best-interests advocacy, and the importance of communication, investigation, and active representation. Galanter’s theory also explains why repeat professional relationships may influence participants in legal institutions. However, the reviewed literature does not directly establish that attorneys for children accommodate judges because they depend on court appointments; they show that the structure and possible incentives exist, but they do not prove that these incentives change attorney behavior.

A study of this issue must therefore separate four questions: whether appointment dependence exists, whether it creates professional incentives, whether deficient or unusually accommodating advocacy occurs, and whether the appointment system contributes to that conduct. This gap supports my present research question: Does the dependence of attorneys for children on court appointments create incentives to accommodate judges or other institutional actors at the expense of independent advocacy for the child?

# Methodology

## Research Design

This study used qualitative document analysis to examine whether the institutional position of attorneys for children may limit independent advocacy in New York custody, visitation, guardianship, and closely related proceedings. The evidence came from two groups of materials: published New York court decisions discussing the conduct or institutional role of attorneys for children, and official statutes, court rules, and program documents describing the appointment system.

The study did not attempt to determine what individual attorneys privately believed or why they made particular decisions. Instead, it examined the conduct described in published opinions, identified recurring patterns of advocacy, and considered whether those patterns were consistent with the professional incentives created by the court-controlled appointment system.

## Case Selection

The principal case sample covered published New York decisions issued between 2009 and 2026. Although the earliest principal decision was issued in 2009, the study used New York’s 2007 clarification of the attorney-for-the-child role as the governing legal starting point. Under that standard, an AFC generally must advocate the position of a child capable of making a considered decision rather than independently choose what the attorney believes would be best.

Cases were located through the New York State Law Reporting Bureau. Searches used terms including “attorney for the child,” “law guardian,” “ineffective assistance,” “substituted judgment,” “failure to consult,” “conflict of interest,” and “meaningful representation.” Decisions cited within relevant opinions were also reviewed.

A decision was included in the principal sample when it:

1. involved custody, visitation, guardianship, or a closely related proceeding;
2. was issued between 2009 and 2026;
3. meaningfully discussed the conduct, effectiveness, removal, conflict, or role of an attorney for the child; and
4. contained enough information to classify at least part of the attorney’s representation.

Decisions were excluded from the principal sample when the AFC appeared only in the caption or when the opinion did not meaningfully discuss the nature or quality of the attorney’s representation.

The final collection contained 17 published decisions. Fourteen formed the principal sample because they directly addressed the conduct or performance of an appointed AFC. Three additional decisions were treated as contextual cases. These cases concerned AFC compensation, professional accountability, or the failure or delay to appoint counsel rather than the conduct of an AFC who had already been appointed. The contextual cases were used to explain the legal and institutional background but were excluded from the principal case counts.

# Coding and Analysis

Each of the fourteen principal cases was reviewed using the same codebook. Basic case information included the year, court, type of proceeding, child’s approximate age when stated, child’s position, AFC’s position, and the court’s response to the attorney’s conduct.

The cases were then coded for specific indicators of independent advocacy. These included:

- consultation or communication with the child;
- communication of the child’s wishes to the court;
- independent investigation;
- presentation of evidence or witnesses;
- cross-examination of witnesses;
- filing of motions or objections;
- pursuit of an appeal when relevant;
- disagreement with another party or the court when necessary; and
- use of substituted judgment.

Each category was marked as present, absent, not stated, or not applicable when appropriate. “Not stated” was kept separate from “absent” because published opinions often describe only the facts necessary to decide the legal issue before the court. A finding of “not stated” therefore did not mean that the attorney failed to perform the activity.

The review also coded possible signs of weakened advocacy. These included failure to consult the child, failure to communicate the child’s position, advocacy against the child’s wishes without a recognized legal basis, unusually passive participation, and unexplained adoption of another party’s or the court’s position.

An AFC’s disagreement with the child was not automatically classified as improper. New York permits substituted judgment in limited circumstances, including when the child lacks the capacity to make a considered decision or when following the child’s wishes would create a substantial and imminent risk of serious harm. The analysis therefore distinguished legally justified substituted judgment from cases in which the attorney failed to support the wishes of a child capable of directing the representation without establishing a recognized exception.

Overall advocacy was classified as active, mixed, passive, or unable to be determined. Active advocacy involved meaningful evidence of individualized and child-centered representation. Mixed advocacy involved meaningful participation accompanied by significant deficiencies. Passive advocacy involved little meaningful development or communication of the child's position. A case was classified as unable to be determined when the published opinion did not provide enough information to assess the attorney's overall representation.

Because institutional accommodation is rarely stated directly in judicial opinions, the cases were also classified into three descriptive categories:

1. **No indication of accommodation:** The AFC supported the child's position or provided an independent, legally recognized basis for taking a different position.
2. **Possible accommodation:** The AFC aligned with a court or institutional outcome while also committing an advocacy failure materially connected to that aligned position.
3. **Unclear:** The opinion did not provide enough information to determine whether the attorney's conduct fit either of the first two categories.

Agreement between an AFC and the court was not, by itself, treated as evidence of accommodation. The classification depended on the attorney's conduct, whether the attorney developed and explained an independent position, and whether any advocacy failure helped preserve or support the aligned institutional result.

The coding separately recorded whether an opinion directly connected the attorney's conduct to appointments, compensation, panel membership, professional relationships, or judicial pressure. This prevented the category of possible accommodation from being confused with direct proof of motive.

After the individual cases were coded, descriptive counts were calculated for consultation, communication of the child's wishes, investigation, overall advocacy, substituted judgment, judicial criticism, remedies, institutional alignment, and possible accommodation. The cases were also compared through thematic analysis. Recurring themes included failure to develop or communicate the child's position, active conduct against the child's objective, passive representation, justified and improper substituted judgment, strong child-centered advocacy, institutional alignment accompanied by advocacy failure, judicial correction, and limitations of the published record.

No inferential statistical tests were used. The cases were purposively selected because they contained meaningful discussions of child representation rather than because they formed a representative sample of all New York Family Court proceedings.

# Institutional-Document Analysis

A separate institutional analysis examined 24 official statutes, court rules, departmental materials, program documents, panel procedures, complaint materials, and compensation or voucher instructions.

The documents were coded according to whether they showed:

- direct structural dependence;
- partial structural dependence; or
- no direct structural dependence.

Direct structural dependence referred to formal court or court-administered control over functions such as individual appointments, panel admission, certification, recertification, evaluation, removal, or compensation. Partial dependence referred to documents showing court involvement in some, but not all, of those functions.

The documents were also coded for whether they supported a plausible incentive inference. This classification asked whether the structure could give AFCs a professional reason to preserve relationships with the institutions controlling assignments, eligibility, evaluation, or payment. It did not mean that the document proved pressure, retaliation, or the motive of an attorney in a particular case.

The analysis distinguished among the roles of different institutional actors. Trial courts generally made appointments in individual cases. Appellate Divisions and AFC offices administered panel membership, certification, recertification, training, evaluation, complaints, and related procedures. Courts and AFC offices also participated in the processing or approval of compensation.

The institutional analysis also recorded safeguards designed to protect independent advocacy. These included client-directed advocacy rules, limits on substituted judgment, confidentiality and conflict requirements, training, workload standards, professional-support resources, complaint and grievance procedures, and appellate review.

The institutional documents were then compared with the case findings. This comparison examined whether the appointment system supplied a plausible structural mechanism for the patterns identified in the cases. The documents were not treated as proof that institutional dependence caused any individual AFC's conduct.

## Reliability and Methodological Limitations

The codebook was first tested on three cases: *Silverman v. Silverman*, *Muriel v. Muriel*, and *Honeyford v. Luke*. The pilot coding was used to identify categories that required clearer definitions before the remaining cases were reviewed.

After the full sample was coded, the dataset underwent an internal consistency audit. During that review, seven examined classifications remained unchanged, two were clarified, and two were corrected. The institutional-document coding was also reviewed for consistency. No independent second coder participated in the study, so the reliability process was limited to internal review rather than formal intercoder agreement.

The study has several methodological limitations. Published decisions are not representative of ordinary Family Court proceedings because they are more likely to involve contested, appealed, or unusual cases. Opinions may also omit consultations, investigations, motions, strategic decisions, and other work performed outside the portion of the record relevant to the appeal.

The purposive sample cannot establish how frequently ineffective advocacy or possible accommodation occurs throughout New York. The documents also do not reveal the private motives of individual attorneys. The study lacked appointment histories, compensation data, internal communications, complaint outcomes, interviews, and other evidence that might directly connect appointment dependence to a particular advocacy decision.

The category "possible accommodation" was created for this study and was not a finding made by any court. It identifies a pattern of institutional alignment combined with a related advocacy failure. It does not establish that an attorney consciously attempted to satisfy a judge or protect future professional opportunities.

Despite these limits, the method allowed the study to identify recurring forms of advocacy, distinguish justified from improper substituted judgment, examine judicial responses to deficient representation, and compare case-level patterns with the formal structure of New York's AFC appointment system.

# Results

### Sample and Scope

The final sample included 17 published New York decisions issued between 2009 and 2026. Fourteen decisions formed the principal analytic sample because they contained enough information to evaluate at least some part of an attorney for the child's conduct or performance. Thirteen of these decisions came from the Appellate Division, while one, *M.M. v. K.M.*, was a trial-level Supreme Court decision. The principal cases came from the Second, Third, and Fourth Departments, as well as the Nassau County trial court.

Three additional decisions were treated as contextual cases and excluded from the main counts. *Venecia V. v. August V.* addressed AFC compensation and professional accountability but provided little information about the attorney's underlying representation. *K.G. v. C.H.* and *O'Mahoney v. O'Mahoney* concerned the failure or delay in appointing counsel for the child rather than the conduct of an AFC who had already been appointed. These cases were used to explain the legal and institutional background of the appointment system.

Because the cases were selected for their relevance and level of detail, the findings describe patterns within this group of published decisions. They should not be interpreted as estimates of how frequently the same conduct occurs in all New York Family Court cases.

## Consultation and Communication with the Child

Consultation with the child was affirmatively documented in five of the fourteen principal cases, or 35.7 percent of the sample. Consultation was affirmatively absent in two cases, *Jennifer VV. v. Lawrence WW.* and *Mark T. v. Joyanna U.*, representing 14.3 percent of the sample. In the remaining seven cases, the opinions did not provide enough information to determine whether consultation occurred.

The child's wishes were communicated to the court in eight cases, or 57.1 percent of the sample. The wishes were affirmatively not communicated in three cases: *David v. LoPresti*, *Jennifer VV.*, and *Mark T.* In two additional cases, the opinions did not state whether the child's position was communicated. Communication was coded as not applicable in *VanDee v. Bean* because the child was approximately three years old and was found unable to express a considered position.

The communication failures took different forms. In *David*, the AFC failed to advise the court of or advocate the child's position. In *Jennifer VV.*, the appellate AFC did not consult the children again or include their current preferences in the appellate brief. In *Mark T.*, appellate counsel supported affirmance without ever meeting or speaking with the child. By comparison, the AFCs in cases such as *Payne v. Montano*, *M.M. v. K.M.*, and *Lorimer v. Lorimer* communicated the children's wishes, even though the courts did not always adopt the requested outcome.

Cases in which consultation was not described were coded as "not stated" rather than as failures to consult. The results therefore reflect only conduct affirmatively described or clearly established in the published decisions.

## Overall Advocacy

Overall advocacy was coded as active in five of the fourteen principal cases, or 35.7 percent of the sample. Three cases, or 21.4 percent, were coded as mixed, and three more were coded as passive. In the remaining three cases, the published opinions did not provide enough information to determine the overall quality of the AFC's advocacy.

The active cases were *Barbara ZZ. v. Daniel A.*, *VanDee v. Bean*, *Alex Y. v. Mindy X.*, *M.M. v. K.M.*, and *Lorimer v. Lorimer*. These decisions described conduct such as consulting with the child, developing an individualized position, communicating the child's wishes, investigating the circumstances, or requesting procedures intended to ensure that the child's position was heard.

The mixed cases were *Payne v. Montano*, *Silverman v. Silverman*, and *Sloma v. Saya*. In each case, the AFC participated in the litigation but also displayed significant deficiencies. In *Payne*, the AFC communicated the child's wishes and participated in the proceeding but did not present witnesses or adequately develop the record. In *Silverman*, the AFC was active in court but used objections and questioning in support of a result contrary to the children's stated wishes. In *Sloma*, the AFC disclosed the child's position but failed to cross-examine important witnesses and engaged in questioning that weakened the child's requested outcome.

The passive cases were *David*, *Jennifer VV,* and *Mark T.* These decisions involved failures to identify, update, or communicate the child's position. In *Jennifer VV.* and *Mark T.*, the deficiencies occurred during appellate representation, where counsel supported affirmance without conducting adequate current consultation with the child.

Overall advocacy could not be determined in *Sagaria v. Sagaria*, *Muriel v. Muriel*, and *Honeyford v. Luke* because the opinions did not describe enough of the attorneys' full representation to classify it as active, mixed, or passive. Figure 1 summarizes the overall advocacy classifications across the fourteen principal cases.

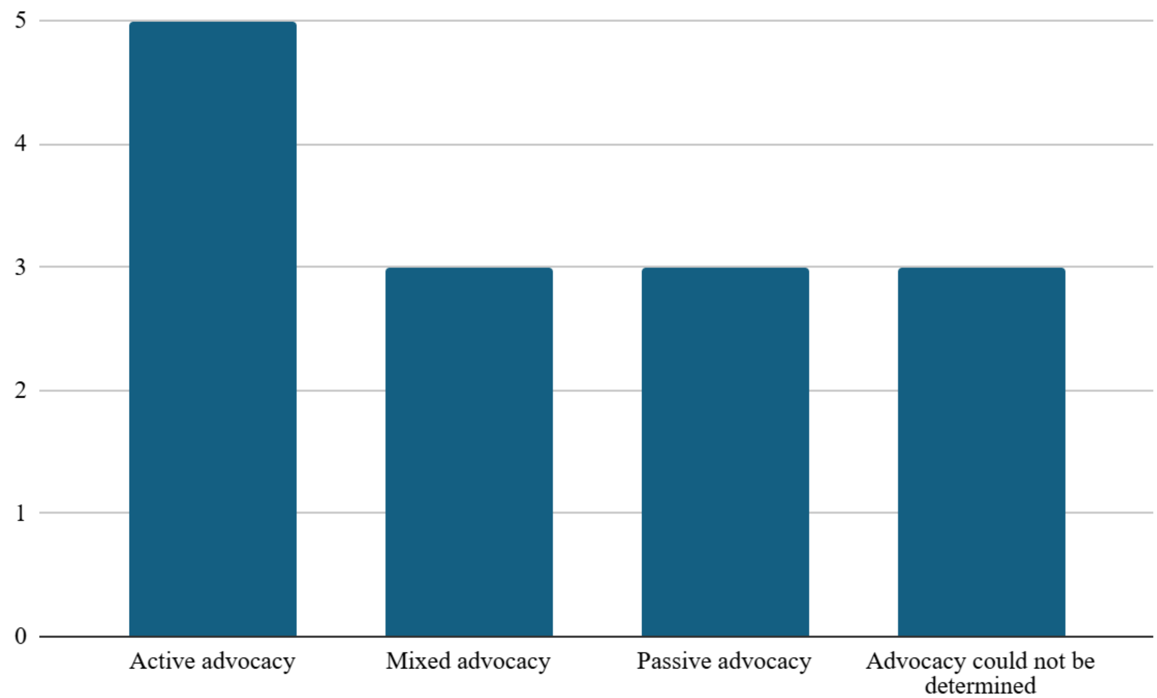


*Figure 1. Overall advocacy classifications among the fourteen principal cases. "Could not be determined" indicates that the published opinion did not provide enough information to classify the AFC's overall representation.*

## Substituted Judgment

Substituted judgment was identified in six of the fourteen principal cases, or 42.9 percent of the sample. It was not used in four cases, while its use could not be determined in the remaining four. Among the six cases in which the AFC took or developed a position different from the child's expressed objective, the courts found substituted judgment justified in three cases and improper in three.

Substituted judgment was upheld in *VanDee*, *Muriel*, and *Alex Y.* In *VanDee*, the child was approximately three years old and was unable to articulate a considered position. The AFC interviewed the child and the parties and developed a position based on the surrounding circumstances. In *Muriel*, the children wanted to live with their mother, but the court accepted the AFC's position favoring the father because of findings concerning the children's capacity and the risk of imminent serious harm. In *Alex Y.*, the court accepted an individualized conclusion that coaching and prolonged litigation had affected the children's ability to form voluntary judgments.

Substituted judgment was found improper in *Jennifer VV*, *Silverman*, and *Sloma*. In *Jennifer VV.*, the appellate AFC relied largely on the children's ages and his own assessment of their best interests without conducting updated consultation. In *Silverman*, the AFC knew the children wished to remain primarily with their mother but advocated a contrary result without establishing a recognized capacity or serious-harm exception. In *Sloma*, the AFC disclosed that the child wanted a custody change but then failed to support that objective and engaged in conduct that weakened the child's position.

The remaining cases either involved advocacy consistent with the child's position or did not contain enough information to determine whether the AFC had substituted the attorney's judgment for that of the child.

## Judicial Criticism and Remedies

Courts criticized the conduct of an AFC in seven of the fourteen principal cases, or 50 percent of the sample. Five decisions, representing 35.7 percent of the sample, expressly found ineffective representation. In *David*, the court identified a serious failure to communicate the child's position without expressly labeling the representation ineffective. In *Alex Y.*, the court criticized timing and confidentiality errors but upheld the AFC's overall representation.

The five ineffective-representation cases were *Payne*, *Jennifer VV.*, *Silverman*, *Sloma*, and *Mark T.* The identified problems included failure to develop an adequate record, failure to consult or communicate the child's position, improper substituted judgment, and litigation conduct that undermined the child's expressed objective.

The remedies varied. Three decisions resulted in the removal or replacement of the AFC: *Jennifer VV.*, *Silverman*, and *Mark T.* Four decisions resulted in a new hearing: *Payne*, *David*, *Silverman*, and *Sloma*. In *Sloma*, the child's custody-modification petition was also reinstated and returned to the lower court for further proceedings.

Representation was upheld in seven cases, or 50 percent of the principal sample. These included cases involving active child-centered advocacy, justified substituted judgment, or unsuccessful allegations of bias or conflict. The remaining cases either resulted in corrective relief or did not contain a definitive ruling on the overall effectiveness of representation.

The sample therefore included both serious advocacy failures and cases in which the courts approved the AFC's conduct. Appellate review corrected some deficiencies, although the decisions do not show how often similar problems arise in cases that are never appealed or published. Table 1 summarizes the principal forms of judicial criticism and corrective relief identified in the sample.

| Finding or remedy | Count | Denominator | Percentage |
|---|---|---|---|
| Court criticized AFC | 7 | 14 | 50.0% |
| Ineffective representation found | 5 | 14 | 35.7% |
| AFC removed or replaced | 3 | 14 | 21.4% |
| New hearing ordered | 4 | 14 | 28.6% |
| Representation upheld | 7 | 14 | 50.0% |

*Table 1. Judicial criticism and remedies in the principal case sample*

***Note.*** *Categories overlap. A case may appear in more than one row. For example, a court could criticize representation, replace the AFC, and order a new hearing in the same decision.*

## Institutional Alignment and Possible Accommodation

Eight of the fourteen principal cases, or 57.1 percent of the sample, involved some alignment between the AFC and a court or institutional result. Three cases showed no such alignment, while alignment could not be determined in the remaining three.

Institutional alignment alone was not treated as evidence of compromised advocacy. In *Barbara ZZ*, *Muriel*, *Alex Y.*, and *M.M*, the AFC agreed with a court position or outcome, but the opinion also described an independent, child-centered reason for that position. These cases were classified as showing no indication of accommodation.

Five cases combined institutional alignment with some form of advocacy failure. Four of them, *Jennifer VV. v. Lawrence WW.*, *Silverman v. Silverman*, *Sloma v. Saya*, and *Mark T. v. Joyanna U.*, were classified as consistent with possible accommodation. In each case, the AFC supported an existing court result, affirmance, dismissal, or custody outcome while also failing to consult, communicate, or faithfully advance the child's position.

The fifth alignment-and-failure case was *Alex Y.* The AFC made errors involving timing and disclosure of confidential information, but those errors were separate from the custody position that the court found independently justified. For that reason, *Alex Y.* was not classified as possible accommodation.

Overall, four cases, or 28.6 percent of the principal sample, were classified as consistent with possible accommodation. Eight cases, or 57.1 percent, showed no indication of accommodation, and two cases were unclear. "Possible accommodation" was a researcher classification rather than a finding made by the courts.

None of the fourteen principal opinions directly stated that an AFC's conduct was influenced by future appointments, compensation, panel membership, or professional relationships with judges or other institutional actors. Figure 2 shows the distribution of the three accommodation classifications used in the study.

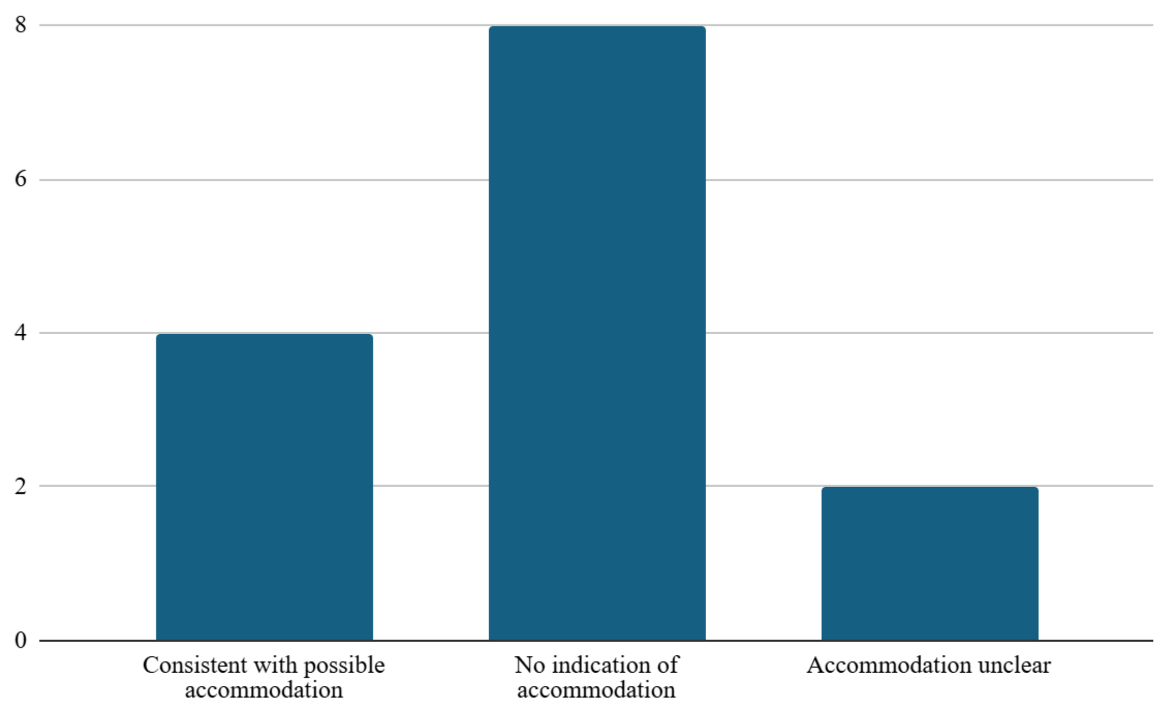


***Figure 2. Accommodation classifications among the fourteen principal cases.*** *"Possible accommodation" is a researcher-created classification based on institutional alignment combined with a related advocacy failure. It is not a judicial finding and does not establish attorney motive.*

## Institutional-Document Findings

The institutional analysis included 24 official statutes, court rules, and program documents. Fifteen documents were coded as showing direct structural dependence, five as showing partial dependence, and four as showing no direct dependence. Fifteen documents were also classified as supporting a plausible incentive inference. These classifications described the structure of the appointment system rather than the conduct or motives of any individual attorney.

The documents showed that different court institutions control different parts of the AFC system. Trial courts appoint attorneys in individual proceedings, while Appellate Divisions and AFC offices oversee panel admission, certification, recertification, evaluation, training, and removal procedures. Compensation is also administered through court-based systems, including judicial approval of claims, Appellate Division or AFC-office processing, and electronic voucher procedures.

The departmental materials showed some variation in how these functions are divided. In the Second Department, which includes Brooklyn, an Appellate Division-supervised AFC office maintains the panel and publishes procedures involving membership, recertification, evaluation, complaints, training, and vouchers. In the Third Department, the Appellate Division designates panel members, trial judges make case-specific appointments, and the AFC office administers vouchers, training, and other panel resources. The public materials reviewed did not provide a complete assignment-rotation or judge-selection formula for either department.

The institutional documents also identified safeguards intended to support independent representation. These included rules requiring zealous and generally client-directed advocacy, limitations on substituted judgment, continuing education, workload standards, complaint and grievance procedures, professional-support services, and appellate review. No document established that a judge or court administrator retaliated against an AFC, reduced compensation because of disagreement, or conditioned future appointments on supporting a court-preferred outcome.

### Missing Information and Limits of the Published Record

The published opinions frequently omitted details about the work performed by AFCs outside the issues addressed on appeal. Independent investigation was not stated in twelve of the fourteen principal cases. Evidence presentation was not stated in ten cases, witness presentation was not stated in ten cases, and motions were not stated in all fourteen cases.

Consultation was also not stated in seven cases. In two additional cases, consultation was affirmatively absent, while in five it was documented. These differences were preserved in the coding. A case marked “not stated” was not treated as proof that the attorney failed to act.

The incomplete records were especially important in *Sagaria* and *Honeyford*. In *Sagaria*, the court rejected unsupported allegations of bias but did not describe enough of the AFC’s substantive representation to evaluate the attorney’s overall advocacy. In *Honeyford*, the opinion noted that the record did not show whether the trial AFC had consulted the children, leaving the underlying representation uncertain.

Published appellate opinions are written to resolve particular legal issues, not to provide a full account of every interview, investigation, motion, objection, or strategic decision. The results therefore identify only conduct affirmatively described or clearly established in the decisions.

Because the cases were purposively selected and drawn from published opinions, the findings cannot establish how frequently the same patterns occur in all New York Family Court proceedings. They also cannot determine the private motives of individual AFCs or prove that appointment, compensation, or professional relationships caused any particular advocacy decision.

# Analysis

### Independent Advocacy in the Case Decisions

The case findings show that formally appointing an attorney did not always produce meaningful, client-directed representation. An AFC may appear in court, file papers, or participate in a hearing while still failing to perform the basic work necessary to represent the child independently. The clearest examples involved failures to learn, update, or communicate the child's position. In *David*, the child's position was not meaningfully presented to the court. In *Jennifer VV.*, appellate counsel relied on earlier contact with the children and did not consult them again before urging affirmance. In *Mark T.*, counsel supported the existing order without ever meeting or speaking with the child. In each case, the problem went beyond a disagreement over strategy. The attorney lacked the current client direction needed to make an informed decision about what position to advance.

These cases illustrate a form of passive representation. The lawyer remained part of the proceeding, but the child's voice was missing or insufficiently developed. That distinction matters because the presence of counsel can create the appearance that the child has been represented even when the child has not had a meaningful opportunity to direct the representation. A court may therefore hear from the parents, agency attorneys, evaluators, and other repeat participants while receiving little or no independent account of what the child actually wants. The attorney's formal participation does not correct that imbalance when consultation and communication have not occurred.

Other cases revealed a different and, in some respects, more troubling problem: the AFC participated actively but used that participation in a way that weakened the child's expressed objective. In *Silverman*, the AFC knew the children wished to remain primarily with their mother but supported a contrary result, presented no witnesses or evidence, and used objections and questioning against their position. In *Sloma*, the AFC disclosed that the child wanted a custody change but failed to cross-examine important witnesses and engaged in questioning that harmed the requested outcome. These cases show that activity alone is not a reliable measure of independence. An attorney may question witnesses, make arguments, and take visible part in the litigation while still failing to advocate for the client's lawful objective.

The comparison between proper and improper substituted judgment further clarifies this point. *VanDee*, *Muriel*, and *Alex Y.* demonstrate that advocacy contrary to a child's expressed wishes is not automatically improper. In those cases, the courts found individualized reasons involving incapacity, influence, or serious harm. By contrast, *Jennifer VV.*, *Silverman*, and *Sloma* lacked a legally sufficient basis for replacing or failing to support the child's position. The important distinction was therefore not simply whether the AFC agreed with the child. It was whether the attorney consulted the child, disclosed the child's position when required, applied the recognized legal standard, and provided an individualized explanation for taking a different position.

The sample also contained examples of strong and independent advocacy. In *Barbara ZZ.*, the attorney's position reflected a long-term relationship with the children and attention to their separate circumstances. In *VanDee*, counsel investigated the circumstances and developed a position appropriate for a very young child who could not direct the representation. In *M.M.*, the attorney communicated the related but distinct scheduling preferences of two siblings. In *Lorimer*, the AFC requested a Lincoln hearing so that the older child's position could be heard, even though Family Court denied that request. These cases demonstrate that court appointment does not inevitably prevent an AFC from acting independently.

Taken together, the decisions support a limited but important conclusion. Some children in the published cases received representation that lacked consultation, failed to communicate their wishes, or actively undermined their stated goals. Others received individualized and effective advocacy, including advocacy that differed from the child's preference for a legally recognized reason. The case evidence therefore establishes that meaningful independence varied considerably within the sample. It does not, by itself, explain why those differences occurred. Poor preparation, misunderstanding of the AFC's role, excessive workload, sincere but mistaken judgment, or other factors could account for some of the failures. Whether court-controlled professional relationships offer an additional explanation requires examining the pattern of institutional alignment and the structure governing appointments, panel eligibility, and compensation.

## Institutional Alignment and the Meaning of Accommodation

The case findings also show why institutional alignment must be interpreted cautiously. Eight of the fourteen principal cases involved an AFC whose position aligned in some way with a court ruling, an existing custody arrangement, or another institutional outcome. That number may initially appear significant, but agreement with the court is not itself evidence that the attorney compromised the child's interests. A lawyer may independently reach the same conclusion as the judge, particularly when the position rests on consultation, investigation, concerns about capacity, or a recognized risk of harm.

The aligned cases therefore fell into two different groups. In *Barbara ZZ.*, *Muriel*, *Alex Y.*, and *M.M.*, the record provided an individualized and child-centered basis for the AFC's position. In *Barbara ZZ.*, the attorney's advocacy reflected knowledge of the children and their circumstances. In *Muriel* and *Alex Y.*, the courts accepted departures from the children's stated preferences because the opinions described concerns involving capacity, influence, or serious harm. In *M.M.*, the AFC communicated the differing preferences of two siblings and developed a position responsive to both. Although the AFCs in these cases agreed with a court or institutional outcome, the available record did not show that they simply adopted that outcome without independent analysis.

The four possible-accommodation cases presented a different pattern. In *Jennifer VV.*, *Silverman*, *Sloma*, and *Mark T.*, the AFC supported an existing order, dismissal, affirmance, or custody outcome while also failing to perform an advocacy duty connected to the child's position. In *Jennifer VV.* and *Mark T.*, appellate counsel supported affirmance without adequate current consultation. In *Silverman* and *Sloma*, the AFCs participated in ways that weakened the children's stated objectives without establishing a sufficient basis for substituted judgment. The concern in these cases was not merely that the attorney and court agreed. It was that the agreement appeared alongside a related failure to develop or advance an independent position for the child.

This distinction helps define what "possible accommodation" means in the study. The term does not describe every case in which the AFC supported the court's preferred result. Instead, it applies only where institutional alignment coincided with an advocacy failure that materially assisted or preserved that result. The classification is therefore more demanding than a simple measure of agreement. It asks whether the attorney's conduct gave the court the benefit of apparent child representation while leaving the child's own position undeveloped, unsupported, or opposed without a sufficient legal basis.

*Alex Y.* illustrates why this narrower definition matters. The AFC aligned with the court's custody conclusion and also committed errors involving timing and confidentiality. However, the court found an individualized basis for the AFC's substantive position, and the identified errors were separate from the merits of that position. Treating *Alex Y.* as possible accommodation would blur the difference between an attorney who independently reaches the same conclusion as the court and one whose advocacy failure directly helps sustain a court-aligned result.

The comparison therefore supports a qualified interpretation. Institutional alignment becomes concerning when it is accompanied by conduct that weakens the child's independent representation, but alignment alone proves little. The four possible-accommodation cases show a pattern consistent with the possibility that institutional expectations influenced advocacy. They do not show that the attorneys consciously sought to please judges or protect future appointments. The opinions contain no direct statements linking the conduct to compensation, panel membership, reputation, or continued access to appointments.

For that reason, the case evidence is best understood as identifying a pattern rather than establishing motive. The pattern becomes more meaningful only when considered alongside the institutional structure in which AFCs work. If attorneys depend on court institutions not only for individual assignments, but also for continued panel eligibility, evaluation, and payment, then repeated alignment combined with related advocacy failures may reflect more than isolated legal error. It may also reveal a structural incentive to avoid conflict with the institutions that control professional access.

## Appointment Dependence as a Structural Risk

The institutional documents provide the mechanism that makes the case pattern potentially significant. AFCs do not operate as entirely independent private lawyers chosen by their clients. Trial courts make individual appointments, while Appellate Divisions and AFC offices oversee panel admission, certification, recertification, evaluation, training, complaints, and removal. Compensation is also processed through court-based systems, including judicial approval of payment claims and administrative review of vouchers. As a result, an attorney may depend on court institutions not only for a single assignment, but also for continued access to future work.

This arrangement does not create a traditional conflict of interest in every case. The court does not become the attorney's client, and the existence of an appointment or payment relationship does not prove that the attorney will compromise the child's position. Many legal systems rely on judges or court administrators to assign counsel, and some centralized oversight is necessary to ensure training, availability, and professional competence. The structural concern arises instead from the continuing nature of the relationship. A panel attorney may appear repeatedly before the same judges, rely on continued certification, and submit compensation requests through systems controlled or supervised by court actors.

Galanter's repeat-player theory helps explain why this structure may matter even without an explicit threat. Children usually encounter Family Court only occasionally and have little control over the institutional relationships surrounding their cases. AFCs, judges, agency lawyers, and institutional providers, by contrast, may work within the same system for years. Repeat participation creates experience and professional familiarity, but it can also encourage participants to protect long-term credibility and access. For an AFC, forcefully challenging a judge, opposing an expected resolution, or pursuing an unpopular appeal may create professional discomfort even when no formal penalty follows.

The likely pressure is therefore indirect. An attorney does not need to be told that future appointments or payments depend on cooperation. Over time, the attorney may learn which arguments particular judges accept, which positions are viewed as unrealistic, and which lawyers are regarded as constructive or difficult. That knowledge can shape advocacy in subtle ways. A lawyer may soften an objection, hesitate to request a lengthy hearing, accept an existing custody arrangement too quickly, or interpret the child's interests in a way that fits the court's preferred resolution. Such conduct may occur without conscious dishonesty and even while the attorney believes that compromise is practical or beneficial.

The four possible-accommodation cases are consistent with this kind of structural pressure because the AFC supported an institutional result while failing to perform a related advocacy duty. However, the available evidence does not establish that the appointment system caused those failures. The opinions contain no private communications, appointment histories, voucher disputes, or statements from attorneys explaining that they feared professional consequences. It is therefore impossible to determine whether the conduct resulted from institutional incentives, poor preparation, role confusion, excessive workload, legal error, or some combination of these factors.

The institutional evidence nevertheless supports the conclusion that a plausible incentive exists. The same court-centered system influences who receives assignments, who remains eligible to accept them, and how compensation is processed. Ethical rules requiring loyalty and independent judgment are meant to counteract those pressures, but formal rules may not fully eliminate the influence of repeated professional dependence. The strongest claim supported by the evidence is therefore structural rather than personal: New York's AFC system places attorneys in relationships that may make institutional accommodation professionally easier than sustained conflict, even though the available cases do not prove that this incentive determined any individual attorney's conduct.

## Alternative Explanations for Deficient Advocacy

Appointment dependence is not the only possible explanation for the advocacy failures identified in the cases. Several other factors could produce similar conduct, and the available opinions do not allow those explanations to be separated with certainty. A careful analysis therefore has to distinguish between evidence of weak advocacy and evidence of why that weakness occurred.

One possible explanation is inadequate preparation. An attorney who fails to meet with the child, update the child's wishes, investigate the facts, or develop the record may simply have handled the case poorly. The failures in *Jennifer VV.*, *Mark T.*, and *Payne* could reflect insufficient preparation rather than a desire to accommodate the court. Published opinions rarely describe an attorney's workload, staffing, time constraints, or preparation process, so the record cannot show whether these failures arose from institutional pressure or ordinary professional negligence.

Heavy caseloads and limited resources may also weaken representation. AFCs may need to manage numerous cases involving urgent hearings, family conflict, and changing circumstances. Limited compensation, lack of support staff, or difficulty arranging meetings with children could reduce the time available for consultation and investigation. These pressures might help explain passive representation even when the attorney has no intention of favoring the court. At the same time, resource constraints do not excuse failures to perform the basic duties of representation, especially when the child's position is never learned or presented.

Role confusion offers another explanation. New York's earlier law-guardian model sometimes blurred the difference between representing the child, determining the child's best interests, and assisting the judge. Attorneys trained or socialized under that older model may continue to view themselves partly as neutral problem-solvers rather than as advocates for a client. This could explain why an AFC might support what appears to be a practical or court-approved outcome while believing that the attorney is protecting the child. The improper substituted-judgment cases are consistent with this possibility because the attorneys may have believed they were acting responsibly even though they did not satisfy the legal requirements for departing from the child's wishes.

Some failures may also reflect sincere but mistaken professional judgment. Family cases often involve conflicting accounts, allegations of manipulation, and concerns about a child's safety or maturity. An AFC may incorrectly conclude that the child cannot make a considered decision or that the child's requested outcome is too harmful to support. In *Silverman* and *Sloma*, for example, the attorneys may have believed that their positions served the children's interests, even though the courts found that the representation failed to respect or properly advance the children's stated objectives. A mistaken belief about what is best for the child is different from deliberate institutional accommodation, although both can produce the same practical result.

Appellate practice creates additional difficulties. The deficiencies in *Jennifer VV.* and *Mark T.* occurred when appellate counsel supported affirmance without adequate current consultation. Appellate attorneys may focus heavily on the existing record and legal standards of review, especially when new facts cannot easily be introduced. That professional orientation may encourage counsel to treat the child's present wishes as less important than the trial record. Such an approach can still be inadequate, but it may arise from misunderstanding the continuing attorney-client relationship rather than from pressure to support the lower court.

The published record itself is another major alternative explanation. Appellate opinions do not describe every meeting, strategic choice, or investigative step. An attorney may have consulted the child, reviewed records, or considered a different position without those actions appearing in the decision. This is why "not stated" was treated separately from "absent." Some apparently passive cases may therefore reflect incomplete reporting rather than incomplete representation.

These explanations do not eliminate the structural concern. Poor preparation, heavy caseloads, role confusion, and institutional dependence may operate together rather than independently. For example, an overworked attorney may be especially likely to accept an existing court-supported outcome because challenging it would require additional investigation, motions, witnesses, or hearings. Appointment dependence may therefore intensify other weaknesses without being the sole cause of them.

The evidence ultimately cannot determine which explanation best accounts for any individual case. The four possible-accommodation cases remain consistent with institutional pressure, but they are also consistent with negligence, outdated role expectations, resource limitations, or mistaken judgment. This uncertainty limits any causal claim and makes it necessary to examine the safeguards and counterevidence that might protect AFC independence.

## Safeguards and Counterevidence

The institutional structure does not operate without safeguards. New York's rules require AFCs to maintain a traditional attorney-client relationship, advocate the child's position, preserve confidentiality, and depart from the child's wishes only under limited circumstances. These standards directly oppose the kind of passive or court-centered representation identified in several cases. They show that the formal design of the system recognizes the need for attorney independence, even if the case findings suggest that the rules are not always followed consistently.

Training, certification, and recertification requirements may also protect children by limiting panel membership to attorneys who meet professional standards. Court-administered oversight is therefore not only a possible source of dependence. It can also serve a legitimate quality-control function. A system with no screening, education requirements, or evaluation process could expose children to inexperienced or unqualified attorneys. The institutional concern is not that oversight itself is improper, but that the same court-centered system may both regulate attorney quality and influence access to future assignments.

The cases also provide important counterevidence to any claim that AFCs routinely accommodate judges. Several attorneys acted independently and in ways that did not merely support the easiest institutional outcome. In *Lorimer*, the AFC requested a Lincoln hearing so that the child's position could be considered, even though the trial court denied the request. In *Payne*, the AFC communicated the child's wishes despite other weaknesses in the representation. In *VanDee*, the attorney investigated the circumstances and formed an individualized position for a child who could not provide meaningful direction. These examples show that appointment by the court does not necessarily prevent disagreement, investigation, or child-centered advocacy.

The four aligned cases classified as showing no indication of accommodation provide further counterevidence. In *Barbara ZZ.*, *Muriel*, *Alex Y.*, and *M.M.*, the AFC's agreement with a court outcome was supported by an individualized explanation, communication with the child, or a legally recognized reason for taking a different position. These cases demonstrate that court alignment may result from independent professional judgment rather than institutional pressure. Any analysis that treated agreement itself as suspicious would incorrectly classify justified advocacy as compromised representation.

Appellate review also functioned as a safeguard in several cases. Courts ordered new hearings, removed or replaced AFCs, reinstated proceedings, or expressly criticized failures to consult and advocate. These remedies show that deficient representation is not always accepted without correction. Published appellate decisions can also clarify the limits of substituted judgment and reinforce the obligation to communicate the child's position.

At the same time, appellate review is an incomplete safeguard. A child or another party must usually recognize the problem, preserve the issue, pursue an appeal, and obtain a published decision. Many Family Court matters may end without appellate scrutiny, and delays can make later relief less meaningful because custody arrangements and family relationships may already have changed. The existence of corrective decisions therefore demonstrates some accountability, but not that the system reliably detects every failure.

Complaint and grievance procedures offer another formal check. Attorneys may face evaluation, removal from panels, or professional discipline for serious misconduct. Yet the institutional documents reviewed did not provide enough information to determine how frequently complaints are filed, how they are resolved, or whether children can use these procedures effectively. Children may not understand that their lawyer acted improperly, may lack access to records, or may have difficulty challenging an attorney appointed through the same court system.

The safeguards therefore complicate, but do not eliminate, the structural concern. Ethical rules, training, evaluation, appellate review, and grievance systems provide real protections and may explain why many AFCs act independently. The cases showing effective advocacy and justified alignment prevent the evidence from supporting a broad claim that court appointment generally produces accommodation. Still, safeguards are not the same as complete independence. The findings show that serious failures occurred despite the existence of these rules and oversight mechanisms.

The strongest interpretation is therefore balanced. New York's AFC system contains formal protections designed to promote loyal and child-centered representation, and the case sample includes clear examples of those protections working. However, the same system also leaves appointments, continued panel participation, and compensation within a court-centered institutional structure. The safeguards reduce the risk of accommodation, but the available evidence does not show that they fully remove it.

## Answer to the Research Question

The evidence supports a qualified answer to the research question. New York's system for appointing attorneys for children creates professional incentives that could encourage accommodation of judges or other institutional actors. Trial courts control individual appointments, while court-administered institutions influence panel eligibility, recertification, evaluation, complaints, and compensation. Because AFCs may depend on these institutions for continued access to work and professional standing, the structure creates a plausible reason to preserve institutional relationships and avoid sustained conflict.

The case findings are consistent with that risk. Four of the fourteen principal cases, *Jennifer VV.*, *Silverman*, *Sloma*, and *Mark T.*, combined institutional alignment with an advocacy failure directly related to the child's position. In those cases, the AFC supported an existing order or court-aligned result while failing to consult the child adequately, communicate the child's wishes, or faithfully advance the child's expressed objective. These cases do not merely show disagreement between attorney and client. They show situations in which the attorney's deficient advocacy helped preserve or support an institutional outcome.

At the same time, the evidence does not establish that appointment dependence caused the conduct in those four cases. None of the opinions stated that an attorney acted out of concern for future assignments, payment, panel membership, or professional relationships. The institutional documents likewise did not reveal explicit retaliation, threats, or requirements that AFCs support court-preferred outcomes. The study therefore cannot determine whether the attorneys were influenced by institutional pressure, poor preparation, excessive workload, role confusion, legal error, or some combination of these factors.

The evidence also weighs against a broad claim that AFCs generally defer to the courts. Several cases involved strong, individualized advocacy, and four court-aligned positions were supported by child-centered reasoning or a legally justified use of substituted judgment. Ethical rules, training requirements, appellate review, and complaint procedures provide meaningful protections for attorney independence. These findings show that court appointment does not inevitably produce compromised representation.

The most defensible conclusion is therefore structural rather than causal. New York's AFC system places attorneys in continuing professional relationships with the institutions that appoint, supervise, and compensate them. That arrangement creates a risk that institutional expectations may influence advocacy, especially when challenging the court would require greater conflict, time, or professional cost. The four possible-accommodation cases show that conduct consistent with this risk does occur in published decisions. However, the available evidence cannot prove the motives of individual attorneys or measure how often appointment dependence affects representation across the broader Family Court system.

Accordingly, the research question should be answered as follows: dependence on court-controlled appointments appears to create a plausible incentive for institutional accommodation, but the present evidence establishes structural risk and recurring patterns, not direct causation. The study therefore supports concern about the independence of AFC advocacy while also showing the need for further evidence, including appointment records, compensation data, complaint outcomes, attorney interviews, and broader case-level information.

# Conclusion

This study examined whether attorneys for children may face incentives to accommodate judges or other institutional actors because their appointments, continued panel eligibility, professional standing, and compensation are controlled or administered through court-centered systems. The findings support a qualified conclusion. New York's AFC structure creates a plausible risk to independent advocacy, but the available evidence does not establish that appointment dependence caused any individual attorney's conduct.

The case analysis showed considerable variation in the quality and independence of representation. Some AFCs consulted with children, communicated their positions, investigated the circumstances, and offered individualized reasons for their advocacy. Other cases involved failures to learn or present the child's wishes, passive participation, improper substituted judgment, or active conduct that weakened the child's stated objective. Courts criticized AFC conduct in seven of the fourteen principal cases and expressly found ineffective representation in five.

Four cases, *Jennifer VV.*, *Silverman*, *Sloma*, and *Mark T.*, combined institutional alignment with an advocacy failure materially connected to the aligned result. These cases were classified as consistent with possible accommodation. That classification does not mean that the attorneys deliberately attempted to satisfy judges or protect future appointments. None of the opinions directly connected attorney conduct to compensation, panel status, professional relationships, or judicial pressure. The cases instead reveal a pattern in which deficient advocacy sometimes helped preserve an existing court or institutional outcome.

The institutional documents help explain why that pattern deserves attention. Trial courts make individual appointments, while Appellate Divisions and AFC offices oversee functions such as panel admission, certification, recertification, evaluation, training, complaints, removal, and compensation processing. These continuing relationships may create professional incentives to preserve institutional approval or avoid unnecessary conflict. At the same time, the system includes meaningful safeguards, including client-directed advocacy rules, limits on substituted judgment, training requirements, complaint procedures, professional discipline, and appellate review.

The findings therefore do not support the claim that AFCs generally defer to judges or that court appointment inevitably produces compromised representation. Several cases involved strong independent advocacy, and some court-aligned positions were supported by legally recognized and child-centered reasons. Poor preparation, excessive workloads, limited resources, role confusion, mistaken judgment, and incomplete appellate records may also explain some of the failures identified in the sample.

The study ultimately establishes structural risk rather than direct causation. Court-controlled appointments place AFCs in continuing professional relationships with the institutions they may sometimes need to challenge on behalf of their clients. The four possible-accommodation cases show that advocacy failures consistent with this risk appear in published decisions, but the present evidence cannot reveal attorney motive or determine how often appointment dependence affects representation throughout New York Family Court.

Further research would require evidence beyond published opinions, including appointment histories, compensation and voucher data, complaint outcomes, internal administrative records, interviews with AFCs and former panel administrators, and a broader sample of trial-level proceedings. Such evidence would make it possible to test more directly whether court dependence influences attorney behavior. Until then, the strongest conclusion is that New York's AFC system contains a credible structural tension between institutional dependence and the attorney's obligation to advocate exclusively and independently for the child.

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## Legal Authority

N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2.

# Appendices

### Appendix A
### Principal Case Coding Matrix

| Case | Year and court | Consultation | Wishes communicated | Overall advocacy | Substituted judgment | Court criticized AFC | Institutional alignment | Accommodation classification |
|---|---|---|---|---|---|---|---|---|
| *Matter of Payne v. Montano* | 2018, Appellate Division, Third Department | Present | Present | Mixed | No | Yes | No | No indication |
| *Matter of David v. LoPresti* | 2019, Appellate Division, Second Department | Not stated | Absent | Passive | Unclear | Yes | Unclear | Unclear |
| *Matter of Jennifer VV. v. Lawrence WW.* | 2020, Appellate Division, Third Department | Absent | Absent | Passive | Yes — improper | Yes | Yes | Possible accommodation |
| *Silverman v. Silverman* | 2020, Appellate Division, Second Department | Not stated | Present | Mixed | Yes — improper | Yes | Yes | Possible accommodation |
| *Matter of Sloma v. Saya* | 2022, Appellate Division, Fourth Department | Not stated | Present | Mixed | Yes — improper | Yes | Yes | Possible accommodation |
| *Matter of Mark T. v. Joyanna U.* | 2009, Appellate Division, Third Department | Absent | Absent | Passive | Unclear | Yes | Yes | Possible accommodation |
| *Barbara ZZ. v. Daniel A.* | 2009, Appellate Division, Third Department | Present | Present | Active | No | No | Yes | No indication |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Matter of VanDee v. Bean* | 2009, Appellate Division, Third Department | Present | Not applicable | Active | Yes — justified | No | No | No indication |
| *Sagaria v. Sagaria* | 2019, Appellate Division, Second Department | Not stated | Not stated | Cannot determine | Unclear | No | Unclear | No indication |
| *Matter of Muriel v. Muriel* | 2020, Appellate Division, Fourth Department | Not stated | Present | Cannot determine | Yes — justified | No | Yes | No indication |
| *Matter of Alex Y. v. Mindy X.* | 2026, Appellate Division, Third Department | Not stated | Present | Active | Yes — justified | Yes | Yes | No indication |
| *M.M. v. K.M.* | 2018, Supreme Court, Nassau County (trial court) | Present | Present | Active | No | No | Yes | No indication |
| *Matter of Lorimer v. Lorimer* | 2018, Appellate Division, Third Department | Present | Present | Active | No | No | No | No indication |
| *Matter of Honeyford v. Luke* | 2020, Appellate Division, Fourth Department | Not stated | Not stated | Cannot determine | Unclear | No | Unclear | Unclear |

*Note. “Not stated” means that the published opinion did not provide enough information to determine whether the conduct occurred. “Cannot determine” means that the opinion did not provide enough information to classify overall advocacy. “Possible accommodation” is a researcher-created classification based on institutional alignment combined with a related advocacy failure; it is not a judicial finding and does not establish attorney motive.*

*Source. Author’s coding of fourteen principal New York decisions, using the audited case-coding workbook.*

## Appendix B
## Contextual Cases

| Case and citation | Main issue | Reason excluded from principal counts | Contribution to the study |
|---|---|---|---|
| *Venecia V. v. August V.* 113 A.D.3d 122; 2013 NY Slip Op 08140 (1st Dep't 2013) | Post-divorce custody and visitation appeal concerning enforcement of unpaid AFC fees and the father's attempt to resist payment through a malpractice defense. | The opinion focuses on fees and professional accountability and gives too little information about the AFC's substantive representation of the children to code advocacy. | Shows that AFC compensation can be enforced through the courts and that AFCs remain accountable to ordinary professional standards. It supplies institutional context on payment and accountability. |
| *Matter of K.G. v. C.H.* 163 A.D.3d 67; 2018 NY Slip Op 04683 (1st Dep't 2018) | Parentage, custody, and visitation proceeding in which the trial court repeatedly declined to appoint an AFC; the appellate court found the child's point of view absent from the record. | No AFC was appointed, so there was no attorney conduct or performance to classify. | Shows how trial-court control over appointment can leave the child's voice unrepresented and why appointment may be necessary in fact-intensive custody litigation. |
| *O'Mahoney v. O'Mahoney* 206 A.D.3d 819; 2022 NY Slip Op 03901 (2d Dep't 2022) | Contested custody-modification appeal in which the trial court proceeded without appointing an AFC; the appellate court remitted the case for appointment of an AFC and a new hearing. | The opinion does not evaluate the performance of an appointed trial-level AFC. An appellate AFC appeared, but the opinion does not describe that attorney's position or conduct in enough detail to code. | Shows appellate correction of trial-level nonappointment and the Second Department's view that appointing an AFC is strongly preferred in a contested custody matter. |

*Note. These three decisions were coded for legal and institutional background but were excluded from the fourteen-case principal sample. Their exclusion prevents cases involving nonappointment, compensation, or accountability from being counted as assessments of an appointed AFC's advocacy.*

*Source. Author's coding of three contextual New York decisions, using the audited case-coding workbook.*

## Appendix C
## Institutional-Document Coding Summary

| Document or authority | Institutional actor | Function or structural finding | Dependence | Incentive inference | Safeguard or counterweight |
|---|---|---|---|---|---|
| ID-01 Family Court Act § 241 — Findings and purpose | New York Legislature | The AFC system exists to protect children's interests and help them express wishes to the court. | No | None | Statutory recognition of child representation and expression of wishes |
| ID-02 Family Court Act § 243 — Designation | New York Legislature | Court-administrative institutions create, approve, and structure the available sources of appointed AFC representation. | Yes | Plausible | Multiple provider routes and Administrative Board standards |
| ID-03 Family Court Act § 244 — Duration of designation | New York Legislature | Panel status is recurring rather than permanent, and the Appellate Division may alter panel size or rescind designations. | Yes | Plausible | OCA approval provides an additional institutional layer |
| ID-04 Family Court Act § 245 — Compensation | New York Legislature | Compensation method differs by provider model and is integrated into court-administered agreements or statutory panel payment. | Partial | Limited | State funding and formal statutory rates reduce direct dependence on a private opposing party |
| ID-05 Family Court Act § 246 — Supervision by administrative board | New York Legislature | The Administrative Board may supervise and standardize Appellate Division administration of AFC programs. | Partial | Limited | Supervision is divided among multiple judicial-administration bodies |
| ID-06 Family Court Act § 249 — Appointment of attorney for child | New York Legislature | A child's access to appointed representation depends on a judicial appointment, with continuity favored where practicable. | Yes | Plausible | Continuity reduces arbitrary attorney switching and preserves client relationship |
| ID-07 Family Court Act § 249-b — Rules of court | New York Legislature | The Chief Administrator must promulgate workload and training rules governing AFC appointments. | Partial | Limited | Mandatory standards are designed to reduce overload and improve competence |
| ID-08 22 NYCRR § 7.1 — AFC panel plans | Chief Judge / Unified Court System | Appellate Divisions control panel admission, evaluation, removal mechanisms, training, and annual reporting. | Yes | Plausible | Formal standards and removal processes provide procedural safeguards |
| ID-09 22 NYCRR § 7.2 — Function of the attorney for the child | Chief Judge / Unified Court System | AFCs owe ordinary lawyer duties and generally must advocate the child's position | No | None | Strong express professional duties counter institutional deference |

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| | | rather than the attorney's preferred best interests. | | | |
| ID-10<br>22 NYCRR Part 127 — Assignment, compensation, workload, and training | Chief Administrative Judge / Unified Court System | Court and Appellate Division administration directly affect assignments, payment processing, workload oversight, and required training. | Yes | Plausible | Workload standards and training are express quality safeguards |
| ID-11<br>Judiciary Law § 35 — Compensation and voucher approval | New York Legislature | As of the current official text, assigned counsel receives $158 per hour; ordinary compensation is capped at $10,000, subject to extraordinary-circumstances approval, and claims require court approval. | Yes | Plausible | Fixed statutory rate and state funding limit direct dependence on the parties |
| ID-12<br>Second Department Office of Attorneys for Children — program overview | Appellate Division, Second Department | In the department covering Brooklyn, the Appellate Division-supervised office maintains and supports a panel of approximately 520 certified attorneys, publishes recertification, evaluation, complaint, training, and voucher procedures, and provides investigators, process servers, interpreters, and mental-health resources. | Yes | Plausible | Program resources and formal complaint/evaluation mechanisms |
| ID-13<br>First Department Office of Attorneys for Children — overview and advisory committee | Appellate Division, First Department | A court-appointed advisory structure controls panel entry, recertification, complaint review, training, and payment oversight. | Yes | Plausible | Committee process and Presiding Justice supervision provide formal review rather than unilateral trial-judge control |
| ID-14<br>Fourth Department Attorneys for Children Program — overview | Appellate Division, Fourth Department | The program combines panel administration, voucher processing, training, guidelines, and support services under Appellate Division supervision. | Yes | Plausible | Mandatory education and support services promote quality and independence |
| ID-15<br>Second Department — How to make a complaint about a lawyer | Appellate Division, Second Department | Members of the public may file signed written complaints with the committee having jurisdiction over the attorney's office; staff attorneys screen the complaint and full-time staff may investigate and prosecute misconduct. | No | None | External professional discipline is institutionally separate from an individual trial judge's case decision |
| ID-16<br>Privately paid Attorney for the Child appointment process | New York State Unified Court System | In private-pay matters, the court controls appointment and issues a final order approving the total compensation. | Yes | Plausible | Final judicial review can correct overpayment and establishes a documented compensation order |
| ID-17<br>Second Department — AFC recertification and evaluation procedures | Appellate Division, Second Department | Continued panel participation is subject to court-administered recertification and evaluation procedures. | Yes | Plausible | The use of documented procedures and Appellate Division supervision reduces exclusive control by a single trial judge |

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| ID-18<br>Second Department — panel membership application and certification | Appellate Division, Second Department | Entry into the Second Department panel depends on application and Appellate Division certification. | Yes | Plausible | Certification is handled by an Appellate Division-supervised office rather than solely by a trial judge |
| ID-19<br>Second Department — AFC complaint listing and attorney-grievance process | Appellate Division, Second Department | The department provides both an AFC-specific complaint route and the ordinary attorney-grievance system. | No | None | Professional discipline is institutionally distinct from a single case assignment and can provide external accountability |
| ID-20<br>Third Department Office of Attorneys for Children — program overview | Appellate Division, Third Department | The Third Department explicitly separates panel designation by the Appellate Division from case-by-case appointment by Family Court and Supreme Court judges. | Yes | Plausible | Panel designation and case appointment are divided between the Appellate Division and trial judges |
| ID-21<br>Third Department — panel applications, redesignation, CLE certification, and expense preapproval | Appellate Division, Third Department Office of Attorneys for Children | Third Department panel participation includes formal application and redesignation processes, while significant representation expenses may require preapproval. | Yes | Plausible | Written forms and standardized requirements provide a reviewable administrative record |
| ID-22<br>Third Department — mandatory E-voucher and compensation-claim administration | Appellate Division, Third Department Office of Attorneys for Children / Unified Court System | The Third Department AFC Office directly administers the mandatory electronic compensation-claim system for panel attorneys. | Yes | Plausible | A standardized system and centralized records can reduce ad hoc informal payment practices |
| ID-23<br>Third Department — continuing legal education and panel-member resources | Appellate Division, Third Department Office of Attorneys for Children | The Third Department maintains a continuing education infrastructure specifically for current panel attorneys. | Partial | Limited | Education on ethics, child development, domestic violence, and practice standards counteracts incompetence and role confusion |
| ID-24<br>Third Department — contracted institutional-provider offices | Appellate Division, Third Department | The Third Department uses both private panels and contracted provider offices, creating different forms of institutional dependence. | Partial | Limited | Institutional providers may reduce an individual lawyer's dependence on personal assignment volume, although the organization remains dependent on an Appellate Division agreement |

*Note. Direct structural dependence indicates formal court or court-administered control over functions such as appointments, panel eligibility, continued designation, evaluation, removal, or compensation. A plausible or limited incentive inference means that the document describes a structure that could create a professional reason to preserve institutional relationships. It does not establish actual pressure, retaliation, or an attorney's motive in a particular case.*

*Source. Author's coding of 24 official statutes, court rules, departmental materials, program pages, administrative procedures, and compensation or accountability documents in the audited Step 9 workbook.*