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Letters to the Editor

In-Camera Interviews With Children in Custodial Cases May Protect Them From ‘Toxic Parental Programming’

Editor’s note: This letter was submitted in response to Fink & Katz partner Philip Katz’s column “Praemonitus Praemunitus: The Importance of the In-Camera Interview in Child Custody Matters,” which the Law Journal published Feb. 27.

In his article, Philip Katz convincingly explains how critical a judge’s in-camera interview of a child can be in deciding custody cases. While he identifies what the attorneys for the parties should do in anticipation of the court’s interview to achieve a favorable outcome for their clients, he also posits that, absent an emergency, such interviews ordinarily occur only after the parties have both rested after trial, despite the fact that in his experience (and mine) the in-camera interview “has a more profound impact on the court’s decision than anything the attorneys say or do in court.”

As a longtime matrimonial attorney, I have consistently argued the correctness of Katz’s observation, under cir-

cumstances where I was but in lobbying for the court’s early intervention in cases involving allegations of parental alienation, rather than a belated intervention that occurs after two years of litigation and after two weeks of trial testimony.

If the children’s voices are that important, why should a judge wait until the end of a case to hear from them, especially in cases involving allegations of parental alienation?

Indeed, it is imperative that the court assess such parental alienation claims at the earliest possible stage of the litigation to protect the children from being continuously exposed to toxic parental programming while the proceedings crawl to trial.

As Chief Judge Charles D. Breitel stated in the landmark case of *Matter of Bennett v. Jeffreys*:

“[A] child is a person, and not a sub person over whom the parent has an absolute possessory interest. A child has rights too, some of which are of ... constitutional magnitude. Among those rights is the child’s right to have his or her best interests, and his or her position concerning those interests, given consideration by the court.”

Conversely, when a child is the victim of parental alienation, the child’s rights and voice may be insidiously muted by the time of trial, which urgently necessitates a judge’s

preemptive intervention at an in-camera conference.

As always, one of the ground rules for conducting an in-camera is to do no harm, while at the same time, to thoughtfully probe the child’s thinking.

Consonant with Katz’s analysis, that means that the Judge should have sufficient information about the child and the parental access issues being presented. In lieu of awaiting the conclusion of a trial to acquire the requisite information, judges should simply instruct counsel to submit a memo in advance of an in-camera conference reflecting each party’s most compelling arguments in support of or in opposition to the parental alienation claim, as well as the questions that the attorneys want the court to ask.

In its most heinous form, the victims of parental alienation irreparably lose their relationship with their child or children. It is therefore critical that the court extend its parens patriae arms and embrace the preemptive in-camera given that it may potentially be the most pivotal event in the progression and management of a custody or parental access dispute. Waiting until after a trial is conducted to intervene in cases involving parental alienation may be too late.

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