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COMMENTARY

  **Recent Column Published in the Law Journal 'Misleading' on New York's Protections for Children and Domestic Abuse Survivors**

 [Editor's note: This article was submitted in response to Toby Kleinman's article "Accountability And Oversight: Domestic Violence, Child Abuse,..."

 July 18, 2023 at 06:37 PM

 Commentary

By Robert Z. Dobrish, Lee Rosenberg, Elliott Scheinberg, Adam John Wolff and Eric I. Wrubel | July 18, 2023 at 06:37 PM



[Editor's note: This article was submitted in response to Toby Kleinman's article "[Accountability And Oversight: Domestic Violence, Child Abuse, And Custody Cases](#)," which the New York Law Journal published on July 11.]

The positions taken by Toby Kleinman in her recent column do not comport with New York law, statute, rule, caselaw nor in practice. Kleinman, by all accounts, practices law in New Jersey, not New York.

Accordingly, the positions taken by Kleinman are unfortunately misleading to readers of this publication. Prior critique in this regard may be found in Elliot Scheinberg's letter to the editor "[New York Has Numerous Protections for Children](#)," which the Law Journal published on June 28, 2022; and his column "[Setting the Record Straight as to Interlocutory Appellate Practice](#)," published on January 17, 2020.

Contrary to what is asserted in Kleinman's article, in New York, we have separate Family Courts and Supreme Courts, which both address issues of custody. We have oversight and accountability over a judge's interim decisions on motions.

New York does not have automatic 50-50 parenting schedules with a blanket assumption that courts believe this is good for children, as New York courts are governed by what is the child's best interests.

In New York, parents *do* have an interim way to seek protection for an endangered child by way of orders of protection on behalf of both the victimized parent, and the child at any time.

Kleinman's article further states that we should adopt a specialized domestic violence court, even though New York has had specialized domestic violence courts known as "IDV" parts —standing for "integrated domestic violence"—for years.

Adding to the specialized parts, litigants are also afforded the ability to separately apply for an order protection in Family Court or in Supreme Court, as appropriate. New York courts *do* listen to victims' outcries or expression of fears. Those New York family law judges also receive hours upon hours of training, which includes domestic violence training.

New York has trained counsel who work for the court system and not beholden to parents for payment—assistant county attorneys, for example, prosecute abuse and neglect cases on behalf of their respective counties, and not on behalf of the parents.

Kleinman also references “guardian ad litem” to represent child victims—however, in New York, that role is by and large filled not by guardian ad litem, but by “Attorneys for Children”, which is an entirely separate role and function.

We all agree that issues of domestic violence is a scourge that needs to be addressed on an ongoing basis. Addressing that issue within the context offered by Kleinman, without any understanding of the laws of the State of New York, and published without caveat in this esteemed New York periodical which is a publication of great standing and authority, does a disservice to survivors, to the courts and attorneys who toil in the system, and to the readers.

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