

Barrister Gatekeeping

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When parent-child contact problems are not effectively addressed, children are at risk. There are multiple long-term effects when a child is separated and alienated from one parent according to Amy J.L. Baker, et al., *Restoring Family Connections: Helping Targeted Parents and Adult Alienated Children Work through Conflict, Improve Communication, and Enhance Relationships* (2020). These include "...depression, low self-esteem, anxiety, difficulties trusting others, substance abuse, divorce, difficulties becoming self-sufficient, and difficulties establishing relationships." Id. at 59. An AFCC and NCJFCJ 2022 joint statement recommends family law practitioners maintain a broad lens in view causative factors of parent-child contact problemsⁱ. They identify the adversarial process/litigation as one such factor. Id. A key litigation dynamic disrupting the resolution of parent/child contact problems is what I refer to as "Barrister Gatekeeping."

Gatekeeping in family law matters refers to intentionally limiting children's access to timesharing with a parent. Attorneys may become de facto gatekeepers by delaying actions or filing motions which maintain the status quo when one parent has primary custody of the child(ren). We must strive to efficiently and effectively bring timesharing concerns to the awareness of the Court. Our State Statute Section 61.13(3)(a) asks us to assess the best interests of children considering the "...capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship..." Shouldn't family court professionals also make continuing parent/child relationships a priority?

When scheduling delays result in the child(ren) continuing to spend most, if not all, of their parenting time with one parent, it disrupts the child(ren)'s relationship with the other parent. A well-intentioned delay can be experienced by the children as "a capture" and may lead to Stockholm syndrome. The longer a child remains exclusively with one parent, the greater the likelihood they will align with that parent against the other parent. A more child-centric policy would be to "catch and release" – if there is doubt about a parent's safety, "catch" the child(ren); temporarily delay equal timesharing until an expert checks out the other parent and identifies a safe path back to timesharing, expediting the "release" of the child(ren) to see the other parent. Supervised timesharing can be established, if needed. Parents may stipulate to a temporary plan so the child(ren)'s right to have equal timesharing are protected.*

There must be a priority placed on establishing shared parenting time as soon as possible after a family matter is docketed. Barrister gatekeeping is insidious and pervasive. It may occur as a natural response to legal requirements of due process, legitimate difficulties in scheduling all concerned parties, waiting for evaluations to be completed, and a host of other factors delaying Judicial oversight of the child(ren)'s timesharing schedule. As soon as an attorney or Judge

recognizes children are being deprived of their right to have contact with both parents, action must be taken to reunify the children.

The longer a child is separated from a parent, the more likely that child will suffer psychological and social damage. We must commit to take responsibility to ensure children continue to enjoy relationships with each parent. It takes a village.

* As of July 1, 2023, **section 61.13 of the Florida Statutes** provides for a presumption that “equal timesharing” is in the minor child(ren)'s best interest.

¹ AFCC and NCJFCJ Joint Statement on Parent-Child Contact Problems, <https://www.ncjfcj.org/wp-content/uploads/2022/08/NCJFCJ-AFCC-Joint-Statement.pdf>