

TO: Attorney General Eliot Spitzer
FROM: Nora D. Renzulli, Esq.
DATE: February 20, 2006
RE: Intervention in Richmond County Supreme Court matrimonial case.

**REQUEST FOR ATTORNEY GENERAL INTERVENTION IN THE MATTER
OF RENZULLI V. RENZULLI.**

- *Renzulli v. Renzulli*, Richmond County Supreme Court, Index No. 5338/93 is a pending action still tied in knots seven years after a fraud was committed upon the Family Court. Intervention by your Office is needed to bolster the fraud detecting infrastructure of an archaic court system vulnerable to attorney manipulation. An attorney's disregard for orders issued by the Supreme Court has snowballed into a legal nightmare in which the goal of safeguarding and protecting the children of divorce has been lost.
- As counsel to the Hon. Terrence J. McElrath, F.C. J, and as the Chief Law Enforcement Officer in this State, and especially under the omnibus role of attorney for the People of the State of New York, the Attorney General can play a pivotal role in matters of law and public policy in helping the court to untie these knots. The Attorney General can bring the moral and legal authority of its Office to bear in intervening to assist the court in setting aside orders of custody and child support issued by the Family Court that were procured as a result of fraud upon the court. These orders have wreaked great havoc on my family and on the courts. The fraud that was committed is institutionally very destructive because it subverted New York's two tier system for family law determinations.
- Respondent Family Court was represented by the Office of the Attorney General in the Article 78 matter of *Renzulli v. Terrence J. McElrath, FCJ.*¹
- Common questions of law and fact within the brief and record at trial and on appeal arose in the Article 78 and this knowledge puts the Attorney General in a unique position to authoritatively assist in the disposition and clarification of the underlying private civil matters currently pending in Richmond County by means of formal intervention under CPLR section 1013.

THE ADVERSARY SYSTEM IS WEAKENED BY EXTRINSIC FRAUD.

- There is a pressing need for the intervention of the Attorney General to shore up the ability of the adversary system to arrive at the truth and to produce a fair result in this

¹ *Nora Renzulli v. Terrence J. McElrath, FCJ*, 185 Misc. 2d 243; 712 N.Y.S.2d 267; 2000 N.Y.Misc. LEXIS 268; (J. Maltese, May 31, 2000); affirmed 286 A.D.2d 335; 728 N.Y.S.2d 783; 2001 N.Y.App.Div. LEXIS 7852 (2d Dept. August 6, 2001)

litigation and to send a message that abuse of the system will not be tolerated. The integrity of the process was derailed by attorney misconduct in the form of a fraudulent scheme starting in 1999 by a Brooklyn and Queens clubhouse attorney who subverted the rule of law in Richmond County Family Court. The attorney in question, the late Norman J. Rosen, Esq., as counsel to the petitioning father, manipulated the two tier family law system in Richmond County and wrongly altered the playing field erasing the petitioning father's burden to prove a significant and subsequent change of circumstances since the prior order of custody to the mother issued by the Supreme Court three years before. The fraud precluded the mother from exercising her right to be heard before the Court moved the children to an alienating and out of state father. Mr. Rosen persuaded the Family Court that the modification of custody standard was not the father's burden to prove because counsel disingenuously claimed and persuaded the court to believe that the Supreme Court had never granted custody to the mother. That was a lie and Mr. Rosen knew or should have known it. He was attorney for the father in his unsuccessful appeal of child support from 1997 to 1998. Custody had been awarded to the mother in 1996 and child support to the mother in 1997. Neither the father nor his counsel asked for a stay or disputed the award of custody to the mother by appeal.

- Successive custody and child support reversals took place in rapid succession in Family Court on an intentional initial standard as a direct result of the attorney's deliberate scheme without the mother being heard first on the correct modification standard in the fragmented two tier structure of Family Court. These Family Court orders were procured as a direct result of this attorney's fraudulent deception on the court. This fraud included repeated and insistent misrepresentations falsely made about the past procedural and substantive history of the case in Supreme Court. The result was an egregious lack of due process with no opportunity to be heard for the mother before the Family Court moved the children two states away to the father on the wrong standard at the beginning of the school year.
- The preemptive out of state move produced leverage and opportunity for the father as the new custodial parent to continue to alienate the children against their mother. He engaged in ongoing exclusionary maneuvers to isolate the children from her after the children were moved. This included interference with visitation and eliminating her from educational and health care information to which she was entitled. This pattern of behavior was an integral part of the efficacy of the attorney's legal success. Also contributing was the law guardian's zealous advocacy for the wishes of the children notwithstanding the elements he was in a position to know about, or should have known about, that included the hallmarks of parental alienation: the children's severe and fundamental impairment and confusion in insight and judgment, abnormal lack of ambivalence by child toward parent, readiness and willingness to sever ties with the mother (idolizing the father and demonizing the mother), flimsy excuses for denigration of the mother, "independent thinker" phenomenon, i.e., "Dad's not telling us what to say," older child's intimidation and violence against mother and younger sibling, in short, every indication of full-fledged parental alienation induced by their father against their mother.

- Experts consider severe parental alienation to be extremely damaging and to constitute a form of emotional abuse of children by the alienating parent. The father was able to add to his stacked and procedurally fictionalized deck by his undermining conduct as a parent in sabotaging the custodial [and later noncustodial] mother's legitimate authority over the teenage children and relationship with them. The father in fact gave implicit approval and permission (through denial and minimization) for his teenage son's escalating violence against his mother, and the father condoned intimidation, menacing and threats of violence by brother against sister, (*physical and emotional aggression by proxy* to extort capitulation by the mother to custody and child support reversals). The attorney more than turned a blind eye to his client's callous and covert aggression toward mother and children. He exploited it in deliberately bringing the misleading custody bid to the fragmented two tier Family Court instead of to Supreme Court where the Court would have been less likely to ignore its own orders on custody and support. After the Family Court-ordered out of state move under false pretenses, the attorney for the father capitalized on the alienation factor and solidified his client's "possession is nine tenths of the law" advantage.
- Lying and conning in court that causes substantive and procedural constitutional rights to evaporate by the actions of an officer of the court must inexorably lead to the invalidation of the court orders so procured and the reinstatement of the valid orders. This invalidation includes the resultant interstate income execution order by the New York Family Court (Richmond County) imposed on the mother by deduction from state payroll predicated on the same court's invalid child support order against the mother, predicated on an invalid custody order. The valid child custody order to the mother and child support order of the father to the mother issued in Supreme Court should be restored.

THE ATTORNEY SUBORNED THE FATHER'S ALIENATION OF THE CHILDREN THROUGH PARENTAL MISCONDUCT AND DESTRUCTION OF THE CHILDREN'S RELATIONSHIP WITH THE MOTHER WHICH BECAME THE GLUE THAT HELD THE FRAUDULENTLY INDUCED CUSTODY AND CHILD SUPPORT REVERSALS TOGETHER.

- The insidious sub-fraud of this attorney's misconduct is something which is all too common. The attorney suborned the father's severe alienation of the children against their mother, a scheme which he greatly facilitated by his fraudulent disempowerment of the custodial mother on every level. No attorney should exploit his or her client's character disordered choice to strip the other party of constitutional rights already acquired or the natural affections of parent and child. No attorney should assist his or her client in the induction of parental alienation to destroy the children's bond with the other parent. In this case the counsel condoned the father's strategy to lure the children into the plan by enlisting them in adult litigation matters that they should never have been exposed to in the first place. The father had a chance to contest custody in the Supreme Court action for divorce from 1993 until 1996 and

chose to forgo it. He dragged the children and their mother through his avoidant and obstructionist refusal to reasonably conclude the divorce process for years and then when it should have finally been over, he reignited the battle and dragged the children into the middle of it as his pawns. The father's attorney in the Family Court proceedings gave his implicit approval to the alienation and prevented nonadversarial court monitored family systems based solutions which the mother proposed both before and after the custody order procured by counsel's fraud was put into effect.

- The father has had unfettered ability for the last seven years to continue to inculcate destructive values in the children, now ages, 19 and 21, and has caused them to demonize and marginalize their mother with the consequent mental, emotional and behavioral impairments that go with severe alienation. The attorney suborned an unconscionable viciousness in his client's tactics as a parent and in their joint goal to win at all cost. This "victory" has been at the expense of the children's loss and to their extreme detriment. They went from having two parents in their life to just one. It should be noted and the record will reflect that when the mother was custodial parent, the father testified that he never missed a single Wednesday night or alternate weekend to see the children. The mother as a matter of record never interfered with the father's access or relationship with the children. And instead, as any good parent should, she honored it. This occurred during the nine years of the father's role as non-custodial parent since he left the marriage and the children in the mother's care in spite of the father's passive aggression and refusal to cooperate as a parent on a host of issues, including regular payment of child support. Visitation was handled and honored by the mother pursuant to a mediated visitation agreement despite the existence of any explicit court order that mandated the mother comply with a visitation schedule based on provisions in the judgment of divorce. The mother lived by the creed that the last thing the children needed was *two* alienating parents.
- Our secular system needs to not lose sight of a fundamental moral and sacred principle and its formal declaration needs to be readily accessible in common law and etched in stone in this decision as a deterrent to others. Fathers can win custody or mothers can win custody as long as it is a fair fight, but in the context of a custody battle, the children will always lose if *the power of the court is invoked or manipulated to support a parent's choice to teach his or her child to hate anyone, much less the other parent*. That should be the most important moral object lesson that comes out of the continuing problem-solving sequel to the fraud and sub-fraud that were committed on the court and on the children in this case.
- The Attorney General can speak with the voice of authority on this point and begin to undo the grotesque lack of clarity that has nearly destroyed the ability of the system to right itself, to articulate guidance on where the plumb line should be for legal conduct in litigation, and to educate and deter so that litigants and their counsel can come to clearly know what is legitimate and what is not; what the Attorney General and the courts find acceptable, legally and morally, and what they categorically do not. The father's pleadings in the court below and brief on appeal of the Article 78 contained no effort to contravert any of the material I offered to show the father's

alienation of the children and the role it played in the father's abuse of process and parenting. Verifying this should pose no problem for the Attorney General as these records are in the possession of the Attorney General.

- The Attorney General has a unique opportunity in this case to put its legitimate law enforcement foot down and participate and assist the courts in the formation of civil case law of state wide importance to counteract extrinsic fraud which will deter and impose consequences for the schemes of unscrupulous attorneys in custody and child support matters who put their interests in winning at all costs over the pressing need of the post divorce family for compliance with court orders, peace, harmony, cooperation, truthfulness, and the essential stability of a healthy relationship for the children with both parents.
- The Attorney General can assume his rightful leadership in the fight against fraud upon the court and use the authority of his Office to intervene and ask for a generalized principle of law to be articulated in this case for a current generation of unprotected litigants and their children defrauded as consumers of the justice system, a system under attack for lack of transparency and accountability. It is a unique opportunity to advance the development of the common law to encourage the creation of a new remedy by precedent that protects the essential parent-child bond among a currently under protected at risk population (custodial parents at the mercy of abusive former spouses who alienate and use their children as pawns to decustodize the other parent and be subsidized by child support for having done so). It would strike a blow for attorney standards of decency in matrimonial law. The right case law could speak to the severe and systemic injustice for children and the parent constantly upended by either slick or crude manipulative tactics by the other parent and the other parent's attorney. Children and adolescents are at risk. Deceptive and abusive practices prejudice the chances of the rule abiding *good* parent from prevailing and puts the table-turning and rule-breaking parent in the ascendant position. In a system where the truth does not matter and liars are not held accountable, the rule of law is replaced by the mere appearance of the rule of law.
- In the current climate of cynicism about attorney accountability and the legal system's ability to self-correct, the public sees little or no amends made for the harm done when officers of the court cross the line and their deceptive practices subvert the system itself and destroy lives. Over time this cumulatively acts to erode public confidence in the court system as it may ultimately create more problems than it solves in any given case. One reason we need problem-solving courts is because attorney misconduct generates and compounds the enormity of the original problem and loss for divorcing parents and their children. They may leave with more entrenched and intractable problems than when they came to court in the first place.

ACQUIESCENCE IN NON SEQUITUR MUTUALLY EXCLUSIVE SERIAL ORDERS OF INITIAL CUSTODY IN TWO DIFFERENT COURTS IN THE SAME COUNTY AS A RESULT OF FRAUD ON THE COURT UNDERMINES

THE PUBLIC'S CONFIDENCE IN LAW ENFORCEMENT, THE COURT SYSTEM AND THE RULE OF LAW.

- It is difficult to fathom for the public how there can be legitimate and enforceable decisions on child custody and child support to the father from Family Court when the mother who legitimately already had acquired custody in the Supreme Court after a six year struggle after the father left the marriage and the children in her care, loses custody of the children even though she has not even been heard before her 12 and 14 year old children are moved out of state at the beginning of the school year and her support order is summarily terminated and she is ordered to pay the father. How could there be serial competence or subject matter jurisdiction for each of two initial custody proceedings in each of two different successive forum for the same family?
- How can such orders be valid when the reason for the second initial custody proceeding was that the counsel for the parent who chose to forgo seeking custody in the first round lied to the court and persuaded the court to treat the case as if his client's earlier first chance for a bite of the apple of initial custody had never happened? Why then should the father receive the easier and more beneficial standard which that entailed on the second round and the mother is not even heard from on the right standard or the wrong standard before the children are moved?
- The Administrative Judge of the Supreme Court occupies a newly created position in Richmond County. This position was created to provide a voice of authority in this venue for Staten Island. The Hon. Philip G. Minardo has been given the authority to preside administratively over the Supreme Court of Richmond County. Since he does not, however, preside over the Family Court, there is an institutional gap in the two tier system in Richmond County for administrative purposes. Furthermore, relevant custody and child support records in the Family Court on these issues have gone missing. The Attorney General's intervention is appropriate here because the Attorney General already has an established connection to the Family Court in this case. I ask that you intervene in the pending proceeding because you have legitimate standing to educate and inform the Administrative Judge of the fraud committed upon your client, the Family Court, which produced the award of custody and child support to the father and usurped the authority of the Supreme Court's legitimate orders of custody and support to me.
- I ask the Attorney General, as the representative of the Executive Branch, to carefully weigh the rights of society, its role in the process of checks and balances with the other branches of government, and the legitimate claims of the victimized members of this family against any arbitrary decision that the role of counsel to a public officer would categorically preclude becoming involved on any level in the specific legal clarification that is being respectfully requested in the pending litigation in Richmond County Supreme Court noticed to be heard on March 1, 2006.

- If the Attorney General elects to intervene, he can more authoritatively protest with standing on a systemic level the deception spawned by attorney misconduct and the ongoing revictimization of the mother and children as a result of the fraud committed upon the court in this case.
- It should be noted that these issues may be subject to consolidation and voluntary withdrawal by the current decision-makers and reassignment to a Supreme Court Judge sitting at 18 Richmond Terrace outside of the nexus of the Homeport matrimonial part and to a new judge who has no conflict or appearance of impropriety. The current decision-makers were the product of assignment in a chain of delegation of decision-making authority outside of the neutral assignment system by a Judge no longer sitting in Richmond County [now in Brooklyn] who did not apprehend the fraud committed upon the court and who retaliated against and threatened me with sanctions for even suggesting it. Currently the case is on as a Motion to Reargue before Special Referee Charmaine Henderson on, inter alia, the validity of provisions of the Family Court child support order; and in a Motion before Justice Barbara Panepinto on a challenge to the validity of the Family Court child custody order by the mother. They are both returnable on March 1, 2006.
- In further support of the incontrovertible history of violations of due process that exist in the Family Court custody case when the wrong standard was used, the court transcripts which the Attorney General has available to it as counsel are included in the record on appeal. The decisions of Justice Joseph Maltese, *Renzulli v. McElrath*, May 31, 2000; and *Renzulli v. Renzulli*, July 14, 2000 both indicate the modification standard, as a matter of law, requires that the parent already granted custody has a right to be heard but was not before the children were moved. The inescapable result was that the initial standard was incorrectly used. The record reveals this defect was controverted, briefed and argued and no objection was waived. Justice Maltese in the latter decision includes dicta expressing the Court's frustration over the two tier system of family law adjudications which in this case has wasted judicial resources and caused unnecessary friction within the court system as he puts it. Justice Maltese states: "All the time, effort and expense over these jurisdictional issues could have been avoided by having a unified trial court system. But that is a subject which the legislature should immediately address rather than the overlapping jurisdiction of various courts which creates confusion to the litigants and friction within the judiciary." Rather than a mutuality of honest confusion on the part of all players, as Justice Maltese words may be heard to suggest, the more obvious conclusion is that counsel for the father intended to confuse the court to reap the procedural benefit for his client and win at all cost.
- The false claims made by the father's attorney that the mother did not have custody can not be chalked up to an innocent mistake that the attorney may have ingenuously believed about past procedural history. Mr. Rosen knew or should have known this was a lie. Mr. Rosen represented the father on the failed appeal of child support. He

knew on page two of the hearing court's transcript he ordered for the appeal that the JHO had ruled that "Custody is not in issue. Custody is afforded to the wife." He knew that the Administrative Judge had ordered that custody be heard and determined by the JHO in Supreme Court along with child support and the other issues. And he knew that his client was in arrears of retroactive child support in excess of \$18,000 since 1997 and that he had not prevailed on appeal.

- The opposing counsel's lie can be seen as debunked by the Court when one reads between the lines of the Article 78 decision of Justice Maltese in 2000 which was affirmed on appeal in 2001. Remedies for the obvious inalterable and prejudicial due process violations against the mother, however, were not taken or attempted by the Family Court in 2000. The Article 78 trial court's decision was affirmed on appeal in 2001 and written in narrow terms with no instructions for remand or remedy of the obvious contradiction that even though it held there was concurrent subject matter jurisdiction in Family Court and Supreme Court for child custody, was there concurrent jurisdiction or competence for the court to repeat for a second time the standard of initial custody? In any event, by that time, two years after the preemptive move out of state, the children had already been well steeped in the hold of the father's alienation. They were sealed in permanent custody to the father as a result of Judge McElrath's final order in 2000 even though it was built on the shifting sands of subject matter jurisdiction, and without any court ordered attempt to cure the defects and legacy of Mr. Rosen and Mr. Katz's manipulated out of state move without due process of law. The opposing counsel and law guardian's combined refusal to acquiesce in updated evaluations of the children put the final nail in the parental alienation coffin for restoration of any semblance of normal relationship for the mother with the children. The protection and welfare of the children was completely lost sight of by the system with no timely acknowledgment or sanctions for the father's litigious bullying and heinous parental misconduct.
- Perhaps the Attorney General can determine whether the firm of the late Mr. Rosen stands liable for treble damages under the Executive Law which prohibits and penalizes lying by an officer of the court in court in a pending proceeding and the same for the Law Guardian Richard Katz, Esq. who joined the Attorney for the Defendant in pressuring the Family Court to rule in favor of the burden of initial custody, but later the Law Guardian, without conceding his "playing dumb" and advocacy for the position that it was legally correct the year before for the court to move the children without hearing from the mother first. Mr. Katz completely reversed his position on this legal question in an affirmation submitted on the mother's June 2000 *nunc pro tunc* application to Justice Maltese to set the record straight and demolish any lingering doubts being voiced in the resumption of the Family Court proceedings after the hearing on the Article 78 about her *de jure* custodial parent status acquired and retained since 1996 by order of the Supreme Court.²

² See affirmation of Richard Katz, Esq. and his quotation cited in *Renzulli v. Renzulli* NYLJ, July 28, 2000, p. 32, (*J. Maltese, decided July 14, 2000*), to wit: "Judge Radin clearly awarded custody to the mother on September 18, 1996 and reiterated this on January 31, 1997." [Katz] further stated that he has "no objection

- The decisions and orders in the Family Court proceedings were procured as a result of the Petitioner-Father's attorney's fraud on the court with the help of the Law Guardian and must be set aside pursuant to controlling appellate case law in another dual jurisdictional fact pattern decision issued by the 2nd Department.³

A WELL CRAFTED FAMILY LAW DECISION AT THIS POINT CAN SERVE TO DETER ATTORNEY MANIPULATION AND MISCONDUCT AND RECTIFY UNJUST DECISIONS PROCURED AS A RESULT OF FRAUD ON THE COURT.

- The Attorney General, in his capacity as the Chief Law Enforcement Officer in New York State, should urge the Supreme Court presiding over the pending *Renzulli v. Renzulli* matter to enunciate clearly in its decision that a *fraud upon the court* occurred and was perpetrated by means of the misrepresentation of the Petitioner-Father's counsel and was made possible by the suborning of the *fraud on the children* in the parental alienation by the father. The decision should articulate that as a result of this dual manipulation, the Respondent-Mother was robbed of the opportunity of any ability to defend in the action or protect her children from further emotional abuse before and after the children were moved on the wrong standard. The resultant orders of custody and child support are unconscionable, unjustifiable, and unenforceable as a matter of law and of public policy.
- A decision should be urged that condemns this type of subversion of the rule of law replete with its due process violations and manipulation of the children to procure as a result of fraud a change of custody and child support. The court should give legs to its decision by generalizing sufficiently so that other targets of parental alienation, domestic violence, due process violations, and fraud on the children interwoven with fraud on the court can cite this case.
- Case law is a necessary weapon in the courts' arsenal to preempt new schemes in the beginning stages or to invalidate old schemes procured by extrinsic fraud or other misconduct by unscrupulous counsel which defeat justice and the non-prevailing party's right and the children's right to fair custody and child support determinations. The Attorney General should urge the court to act with all speed and deliberation in order to avoid any further additional harm, or aggravation of the significant harm already done by officers of the court to my family. The Attorney General should urge the court not to minimize or condone the father's documented alienation and hostility to restoration of healthy mother-children relationships, and instead, do everything possible within the framework of its decision and order to create and promote the present and future conditions for restoration of positive relationship and healing for the children and their mother.

to a carefully worded nunc pro tunc order which indicates that Judge Radin's previously award of custody of the children."

³ *Tamimi v. Tamimi*, 38 A.D. 2d 197, 328 NYS2d 477, LEXIS 5525 (2d. Dept. 1972).

- There are no coincidences. Today's *Staten Island Advance* carries comments you made last night: "Nobody in this society is so powerful they are above the law. When they're lying and stealing, we will find them."⁴
- I ask you to please make this promise a reality in my case in the Staten Island courts. It would be the ideal opportunity to show that the Attorney General believes that dishonest attorneys are not off limits and those who lie, subvert the system and dishonor the oath as officers of the court will be held accountable and their deceit exposed. As Schopenhauer said, "truth passes through three stages: first it is ridiculed; second, it is opposed; and third; it is accepted as self-evident". Your intervention in this case will greatly accelerate the evolution of truth to the third stage. Thank you in advance for your urgently requested assistance and cooperation. Please let me know at your earliest opportunity that you intend to intervene in this case. I can be reached at 646-287-2008.

⁴"Spitzer Courts Key Minority Communities," at A2, col. 2, February 20, 2006.