

## FAMILY WARS: THE ALIENATION OF CHILDREN

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### COMPOSITE CASE FROM ACTUAL EXAMPLES

*The parents of Amy (age 10) and Kevin (age 7) are divorcing after 13 years of marriage. Their father, by temporary stipulation, has moved from the marital home. He is entitled to visit with the children on alternating weekends and one evening during the week. Soon the children begin to refuse to go with him. At first, they do not want to leave Mom; they say that they are afraid to go. When Dad comes to the house, Mom tells him that she will "not force the children to go." "Visitation is up to them." and she will "not interfere in their decision". The children refuse to talk with him on the phone. Mom calls him names when he telephones and complains constantly about her financial situation, blaming him, all within hearing of the children.*

*Dad attempts to talk with the children about the situation, then to bribe them with movies, shopping trips and toys. They become more and more sullen with him and resistant to coming. Anything, routine doctor visits, invitations from a friend, a visit to Aunt Beth, serves as an excuse to avoid visits.*

*A court appointed guardian ad litem learns from the children that "Dad is abusive and mean to us." They do not want to go on visits. However, when asked to give specific examples of how he is abusive, their stories are not convincing. "He yells too loud when we make noise." "He made me climb all the way to the top of a mountain." "He gets mad at me about my homework." "He makes me wear my bike helmet." "He pounds the wall to get us up in the morning and it makes me afraid that he'll hit me." They say that he has never hit them, although they state that they are very afraid that he will.*

These children are in the process of becoming alienated from their father.

An increasing number of children are experiencing the divorce of their parents or litigation over their custody some time during their minority. Some children experience the concerted, albeit often unconscious or unintended, attempt of one parent to alienate them from their other parent.

It is the purpose of this article to alert lawyers and judges involved in divorce and custody wars to the serious nature of parental alienation and to provide suggestions for court based intervention.

## I. DEFINITIONS

**Parental alienation is the creation of a singular relationship between a child and one parent, to the exclusion of the other parent.** The fully alienated child is a child who does not wish to have any contact whatsoever with one parent and who expresses only negative feelings for that parent and only positive feelings for the other parent. This child has lost the range of feelings for both parents that is normal for any child.

There are significant disputes between the experts as to the theoretical framework for this phenomenon and as to the appropriate terminology to apply to understand it, which disputes are beyond the scope of this article. We have tried to adopt language with common sense meaning for our discussion and use the term "alienation" in its non-technical sense.

We name the parent who acts to create such a singular relationship between the child and himself the "alienating parent".<sup>1</sup> The parent who is excluded from the singular relationship is "the target parent" We note that alienation can occur both ways, with each parent attempting to alienate the child from the other.

## II. HARM TO THE CHILD

There are three underlying premises regarding the development of children that underlie this article. First, all litigation concerning children can affect their healthy growth and development negatively. The greater the acrimony and the greater the part that the children need or are asked to play in the litigation, the greater the potential for harm.<sup>2</sup>

Second, it is psychologically harmful to children to be deprived of a healthy relationship with one parent. There is a substantial body of research that indicates that children need contact with adults of both sexes for balanced development."<sup>3</sup>

**Third, with the exception of abuse, there is no good reason why children should not want to spend some time with each of their parents, and, even with abuse, most children still want to maintain some relationship with the abusive parent.** It is the job of the parents, the professionals and the courts to see that such contact is possible under safe circumstances.<sup>4</sup>

Alienating messages and behavior, whether intentional or not, place the child in a severe loyalty bind, a position wherein the child believes she must chose which of her two parents she will "love" more. To have to choose between parents is itself damaging to the child, and, if the end result is the exclusion of a parent from the child's life, the injury is irreparable.

There is a continuum of alienating parental behaviors which cause harm to children, and all positions on this continuum need be of concern to the professionals and the courts. Some of the behavior is scarcely detectable with the result that attorneys and the court system gloss over the alienation as a "normal" part of the divorce or litigation process. However, such barely evident alienating behavior marks the beginning of an alienation continuum.

### III. THE FAMILY SYSTEMS APPROACH

All families are made up of individuals who live together in relatively stable intimate groups with the ostensible purpose of supporting and caring for each other. Family members develop their own rules and boundaries, spoken and unspoken, about the ways that they will behave with each other, cohabit, be intimate, support and care for each other. Each family's rules and boundaries are unique and change over time to reflect modifications in membership, the evolving needs of its members and the realities the outer world places on the family. Usually, changes in the family system are gradual and evolving, but some events force cataclysmic upheaval in the system. Divorce is usually such an event.

Unless a separating family can change its own rules and boundaries without outside intervention, the divorce process itself may reach an **impasse**, the term applied when the divorce process itself becomes "stuck," and the family system fails to restructure itself appropriately. When there is an impasse, any move by anyone, family member, attorney, spouse, is met with a counter move resulting in no forward progress.

The impasse creates a system of its own, with its own membership, rules and boundaries. Although little recognized by professionals, membership in the divorce impasse system includes all members of the family living together *and* all professionals involved in "helping" the family get a divorce, i.e. the lawyers, mediators, therapists and even the judge.

A divorce impasse can occur at three different levels: an internal level (inside an individual); an interactional level (between two individuals); and/or an external level (within the larger social and familial system).<sup>5</sup> An impasse at any one of the levels will affect the entire system, and how each individual member responds will affect all members, especially the child.

The children themselves are members in both the changing family system and in the developing broader divorce impasse system. As a member of the family system, a child is attached legally, emotionally and psychologically to each of his parents. As a member of a divorce impasse system, a child is often asked to ally himself with one parent or the other, a request which clearly places the child in a loyalty bind. All members of the divorce impasse system, including the professionals, are affected by the loyalty struggles and may become polarized.

### IV. MOTIVATION FOR ALIENATION

There are many motivational factors that could cause a parent to want to alienate her child from the child's other parent. An alienating parent most likely has strong underlying feelings and

emotions left over from earlier, unresolved experiences, which have been resuscitated and compounded by the pain of the divorce. The individual, in attempting to ward off powerful and intensely uncomfortable feelings, develops behavioral strategies that involve the children. The internal world of an alienating parent can have complex and multifarious origins which are beyond the scope of this article.

Alienating parents may not be aware of the emotions described above and quite convincingly may deny to lawyers and judges both motivation and behavior. Other parents may be aware of their angry or hopeless feelings and may consciously attempt to curb these feelings to protect the child. However, despite their best intentions to the contrary, these parents may engage in alienating behavior. Frequently, the unconscious or unintentional alienating behavior results in the milder forms of alienation of the child from the target parent. Nonetheless, it is important to recognize the concrete signs of alienating **behavior**.

The courts should not tolerate alienating behavior simply because the intention to alienate is denied. The disavowal of alienation and active verbal espousal of relationship may be quite convincing and mislead lawyers and judges from the actual truth of the alienation.

## V. RECOGNITION OF ALIENATING BEHAVIORS

### *A. The Continuum: Distinguishing between "Typical" Divorce and "Alienation"*

All parties to divorce experience a wide range of intense emotions, including rage, disappointment, hurt and fear. In "cooperative" divorces the parties consciously suppress their own feelings and try not to engage in behavior they understand to be inflammatory to the other side. They work together to restructure their own relationship and their family to allow the children as normalized a relationship with each of them as possible.

However, an angry divorce is not necessarily an alienating one. The focus in determining whether or not there is alienation in an angry divorce must be, not on the degree of rage or loss expressed, but on the **behavioral willingness to involve the children**. Alienation occurs when a parent uses the child to meet personal emotional needs, as a vehicle to express or carry her own intense emotions or as a pawn to manipulate as a way of inflicting retribution on the other side.

Parental alienation occurs along a broad continuum, based on the level of internal distress of the alienating parent, the vulnerability of the child and the responses of the target parent, as well as on the responses of the external system (family, attorneys, mental health professionals, the legal system). The range may be from children who experience significant discomfort at transition times (mild), through children who feel compelled to keep separate worlds and identities when with each parent (moderate); to children who refuse to have anything to do with the target parent and become obsessed with their hatred (severe).

***B. Mild***

It is difficult to recognize the mild form of alienating behavior. Not only is the behavior itself often subtle but the alienating parent often will deny both motivation and acts. This parent will make sincere statements to attorneys and the court that reflect a regard for the children's needs for the other parent and a respect for the unique role the other parent has to play in the life and development of the child. Usually, there is little polarization in the larger social and familial system, attorneys and extended family included.

At this stage, despite the seeming sincerity, the alienating parent's view of the other parent is compromised, as indicated by behavior. She is not aware of the beliefs and feelings that motivate her unintentional alienating behavior (internal) or of the effect that statements and behavior can have on the child (interactional).

Because the statements of the alienating parent will not give the lawyers or the courts clues that there is alienation in process, it is important to look at the underlying messages that are given directly to the child. **The communications to the child of the regard with which the other parent is held is the key to detecting alienating behavior.**

Examples of mild forms of alienating behavior include:

1. **Little regard for the importance of visitation/contact with the other parent:**  
"You're welcome to visit with Mom; *you* make the choice; I won't force you."  
No encouragement of visits;  
No concern over missed visits;  
No interest in the child's activities or experiences during visitation (in a positive manner);
2. **Lack of value regarding communication between visits:**  
No encouragement of communication between visits;  
Little awareness of the distress a child may feel if a visit or phone call is missed.
3. **Inability to tolerate the presence of the other parent even at events important to the child;**  
"I won't go to any soccer games if your mother is there."
4. **Disregard for the importance of the relationship to the child:**  
Displaying a willingness to apply for and accept a new job away from the other parent, without regard to the child's relationship with that parent.

At this stage alienation is most likely to become obvious during family system transition times, such as when children leave one home and go to another, when one parent remarries or has another child. The knowledge that a child needs the other parent may be present, but this rational belief may become overwhelmed by internal and interactional problems at this phase.

**C. Moderate**

The alienating parent has some awareness of emotional motivations (fear of loss, rage) and little sense of the value of the target parent. Sometimes, an alienating parent will understand the theoretical importance of the other parent in the life of the child, but believes that in this case, the other parent, due to character deficiencies, cannot be important to the child. Their statements and behaviors are subtle but damaging to the child.

1.     **Communication of dislike of visitation:**  
You can visit with your Dad, but you know how I feel about it."  
How can you go to see your father when you know... I've been sick; Aunt B is here..."  
"Visitation with your Dad is really up to you."
  
2.     **Refusal to hear anything about the other parent (especially if it is good):**  
"That's between you and your father (regarding reports of visitation; plans for visitation);"  
"I don't want to hear about ... (what you did with your father) (especially if it was fun);"
  
3.     **Delight in hearing negative news about the other parent;**
  
4.     **Refusal to speak directly with the other parent:**  
When the target parent calls, gives the phone to the child "It's **him**," in a disgusted tone of voice."  
Hangs up the phone on the target parent;  
Silently hands the phone to the child when its the target parent calling.
  
5.     **Refusal to allow the target parent physically near:**  
Target parent not allowed out of the car or even on the property, in the driveway, for pick-up and drop-off for visitations;
  
6.     **Doing and undoing statements: Negative comments about the other parent made and then denied:**  
"There are things I could tell you about your Dad, but I'm not that kind of person."  
"Your Dad is an alcoholic; oh, I shouldn't have said that."
  
7.     **Subtle accusations:**  
"Your Dad wasn't around a lot when you were little."  
"Your Dad abandoned me."
  
8.     **Destruction of memorabilia of the target person.**

At this stage alienation continues to occur frequently during transitional times but is present in other circumstances. With moderate forms of alienation, all three divorce impasse systems are involved. The alienating parent is facing an internal conflict; the alienating parent is interacting with the spouse in a manner designed to produce conflict; and the external forces, such as therapists, attorneys and the court, are involved in the polarization, at least to some degree.

***D. Overt***

When the alienation is overt, the motivation to alienate, the intense hatred of the other, is blatant. The alienating parent is obsessed and sees the target as noxious to self, the children, and even the world. A history of the marriage reflects nothing but the bad times. The target parent was never worthwhile as a spouse or a parent and is not worthwhile today. Such a parent shows little response to logic and little ability to confront reality.

Many alienating parents at this stage entertain the overt belief that the target parent presents an actual danger of harm to the children. They present this belief as concrete knowledge that if the children spend time with the target parent they will be harmed in some manner.

1.     **Statements about the target parent are delusional or false:**  
"Your Mom doesn't pay support" when there is evidence to show payment.  
"Your father doesn't love us" (or "you") when there is no evidence to that effect.  
"Your mother drinks too much," "uses drugs," "smokes," etc. when there is no evidence to support these statements.  
"Your father went out and got the meanest lawyer in town;"
  
2.     **Inclusion of the children as victims of the target parent's bad behavior:**  
"Your Mom abandoned us;"  
"Your Dad doesn't love us (or you) anymore;"
  
3.     **Overt criticism of the target parent:**  
"Your Mom is a drug addict/alcoholic/violent person...;"  
"What's wrong with your Dad; he never/always does...;"  
"Your mother endangers your health;"  
"Your father doesn't take good care of you / doesn't feed you / take you to the doctor / understand you during visits."
  
4.     **The children are required to keep secrets from the target parent:**  
"Don't tell your Mom where you've been / who you've seen where you are going/ etc."
  
5.     **Threat of withdrawal of love:**  
"I won't love you if you...(see your Dad, etc.)"  
"I'm the only one who really loves you."
  
6.     **Extreme lack of courtesy to the target parent.**

At this stage of alienation, conscious motivation is always present, and the internal, interactional and external systems are fully engaged in supporting the alienation process. These, and the severe cases described below, are the ones that, as an attorney, invade your private life and lead to emotional over-involvement.

*E. Severe*

By the severe stage, the alienating parent no longer needs to be active. In terms of the motivation, the alienating parent holds no value at all for the other parent; the hatred and disdain are overt. The alienating parent will do anything to keep the children away from the target parent.

At this stage the child is enmeshed with the alienating parent and takes on the alienating parent's desires, emotions and hatreds and verbalizes them to all as his own. The child too believes that the target parent is a villain and the scum of the earth, and sees the history of the target parent and family as all negative. The child is neither able to remember nor express any positive feeling for the target parent.

## VI. INTERVENTION IN ALIENATION SYSTEMS

### 1. Prevention

#### *A. Education*

Divorce is an intense change of role, life stage and life style for almost all who go through it. Participants in the divorce process need as much education, support and information as possible to help moderate the harms of divorce for children.

Certain counties, court systems and other governmental entities are requiring all parents of children involved in a divorce to attend an educational program designed to help them understand the impact of the divorce process on themselves and their children and to recognize the value to children of having both parents involved.<sup>6</sup> They learn about the typical stages in divorce and child development and the impact they can anticipate their divorce having on their children. These programs are designed to be preventative of the kinds of problems that commonly arise when parents do not understand the psychological and emotional consequences their divorce has on all concerned.<sup>7</sup>

Other states require mandatory mediation prior to a court trial as a way of avoiding litigation. Mediation advocates believe that mediation is more successful than the courts at avoiding future litigation.<sup>8</sup>

We are hopeful that an educational program could have significant preventative and some ameliorating effect on alienation, depending on the stage of the alienation.

#### *B. Attorneys*

Attorneys and therapists are the front line professionals in most custody battles. They, too, have an obligation to educate their clients that divorce involves anger, rage, upset, distress, loyalty binds, and children and parents who manipulate each other in crisis. The clients must be helped to understand the normality of these themes and to learn the strategies for controlling them and



outgrowing them. Alternatives to intense battles, vindication or retribution must be explored. Clients must be educated as to the possibilities for "humane divorce" and about the cost to children of warfare and the cost to children if they don't have access to both parents if access is possible.

It is the duty of the attorney to advocate for the client. Good representation will include assessing the family system clearly from the client's point of view, and to advocate for that client's interests zealously. However, we believe that such zealous advocacy must occur in the context of the client's long term interests as a member of a restructuring family system. Whatever the outcome of the immediate litigation, the client will remain in the family system with contact and relationships with all other members of the family system for the rest of the client's life. Long after the lawyers are gone, the client will live with the effects of the positions taken and the statements made in litigation. The client may later regret the vitriol and the permanency of the damage done by a high conflict divorce.

It is the attorney's job to help the client through the immediacy of the pain and the rage and to help the client see the long term view of family relations. Allowing voice to be given to rage, anger, fear and even vengeful fantasy can be helpful so long as it is not acted out in behavior. Attorneys must help clients see both short term and long term interests in terms of family relations and must not themselves confuse their roles as "counsellors" of law who listen and counsel wisely and as champion and advocate for the client.

Attorneys must also be acutely cognizant of the divorce impasse system itself and the important part they play in it. Maligning the other spouse, requiring the client to have no further contact with the spouse, prohibiting any temporary agreements or a temporary separation can interfere with resolution of the real conflict. Zealous advocacy is a poor excuse for actually damaging a client's long term familial relations.

Alienation cases present the greatest difficulty for attorneys who are asked to represent a parent who wishes to eliminate the other parent from the life of a child. In the advocacy role, an attorney is bound to allow the client to define the goal of the representation and to advance that position zealously.<sup>9</sup> An attorney is also bound not to bring or defend frivolous actions.<sup>10</sup> We believe that actions harmful to children could fall under that prohibition.<sup>11</sup>

If alienation is in progress, accepting at face value all derogatory comments about the opposing party will ill serve both the client and the attorney, as the client's judgment is emotionally clouded. It is incumbent on the attorney to sufficiently explore the client's motivation and the reality basis of the client's beliefs before litigation is undertaken. Careful and thoughtful exploration with the client about the good times in the marriage and the positive parenting traits of the other side will give the attorney much information about both parties and will tell the attorney just how balanced a view the client holds.

We believe that under no circumstances should an attorney encourage a client to gain information about the opposing party from a child. Nor should an attorney interview a child even if the child is unrepresented.<sup>12</sup> The willingness of a client to directly involve a child in the

litigation should be a red flag that the parents may well be using a child to further their own agenda, even if the child is apparently acquiescent.

It is crucial to note, however, that we are describing cases where alienation exists, and other forms of abuse, such as physical or sexual abuse, do not. If abuse is honestly suspected, safety of the spouse or children becomes paramount and full evaluation by a competent professional is a necessity.

### *C. Courts*

It is important for the courts to recognize and support healthy family systems and not to over-react to the volatile emotions of divorce. At the same time, courts must recognize the initial seeds of alienation and seek information about family structure to examine the degree of risk in the family: Are the adults using or manipulating the children in furtherance of their own emotional needs? Are the children vulnerable to alienation?

All children can be enlisted into the battle, but, generally speaking, the children who are most vulnerable may be overly dependant, fearful and passive. These children may express guilt feelings about their parents' divorce, identify with or play the rescuer of the alienating parent, assume caretaking roles of a parent, and/or feel conditionally loved. The more vulnerable children pick up and resonate with the parental feelings. Generally, the children will have little insight into their situation.

The factors that identify families where alienation is *less* likely are: abundant positive contact between both parents and the children; sibling groups who all have good relations with both parents; good relations of the children with family and friends of both parents; free communication to the child by others of the good qualities of both parents; lack of defensiveness on the part of each parent as to the emotions, statements and criticisms of the other; ability of each parent to discuss schedules and parenting concerns with the other parent; ability of each parent to accommodate the schedules and desires of the other.

Many high conflict families view the court as determining not only custody and visitation, but also making judgements about right and wrong, good and bad parenting. Court is seen as a place where one person is judged to be fit, and the other unfit. The court can help ameliorate this unfortunate scenario by making explicit the legal and pragmatic grounds for a decision. If appropriate, the court can declare neutrality on personal and moral issues that do not expose a child to harm. Compassionate communication that does not further the anger, loss, shame and humiliation in this public forum can be immensely healing.

## **2. Mild Alienation Cases**

Once an alienation process has been identified, the court must intervene. In mild alienation cases there is usually a healthy psychological bond between each of the parents and the child and at least some recognition on the part of the alienating parent that an estrangement between the child and the target parent is not in the best interests of the child. The alienating parent is frequently

willing to participate in a program to change the direction of the case if given the information and the guidance necessary.

The alienation at this stage is often motivated by fear that the impending divorce will cause the child to love the alienating parent less. The finalization of the divorce itself together with specific education and the therapy described below may ameliorate the situation.

At the mild stage, it is imperative that *the family be engaged in "family systems" therapy that is focused on changing the behavior of the parties around the child.* The traditional individual therapies are not helpful as individual treatment tends to focus only on one side, therefore potentially increasing the alienation by advocacy for a client. If individual therapy is necessary for a child or a parent, it must take place with a therapist who understands the alienation process and who supports the value to a child of having a relationship with each parent.

All therapists engaged with the family **must** understand family dynamics and parental alienation, have a systems approach and clearly understand that children need two parents. The therapists must be strong and forceful and able to utilize the force of the court through the guardian *ad litem*. The therapy must be directed at the resolution of the divorce impasse.

*The Court ordered divorce impasse therapy must include all the adults directly involved in the custody of the child.* This includes both parents and any live-in lovers or current spouses and any other adult who lives in the home of either the alienating parent or the target parent and any other adult who may be involved in the alienation. A court order may be necessary to require the warring adults to sit in the same room together; but, if at all possible, they should actually face each other.

*The court order must be forceful and explicit.* The rights, responsibilities and duties of each parent must be spelled out explicitly. Attendance in therapy as required by the therapist must be court ordered. The custody and visitation schedule may also need to be explicit, with details of how, when and where pickups and drop-offs are to occur. All parties must understand that a court order cannot be modified unless approved by the court; if modifications can be made by the family with the agreement of the systems therapist, this must be made explicit in the order.

The issue of confidentiality should be addressed by the court, the parties, the lawyers and the therapist. If the parties are able to agree to confidentiality, it should be written into the court order. If the therapy is confidential, it should be confidential to all including the court and the guardian *ad litem*.

If the parties cannot agree to confidentiality, the court should do what it can to insulate the therapist from legal inquiry with due regard for the parties constitutional rights<sup>13</sup>. The court can order the attorneys not to speak with the therapist (except for the Guardian *ad Litem*) during the therapeutic process, order complete confidentiality for the therapist's working notes, delay all depositions until further court order, or otherwise limit the therapist's involvement in the litigation process.

*There must be a mechanism for enforcement of the court order.* The court should appoint a guardian *ad litem* who will have the authority, independent of further court order, to require a complete family system evaluation if the above treatment is not successful. The order at this stage should include the mechanism for the payment of both the Guardian ad Litem and the court ordered evaluation.

The order must allow for rapid and complete intervention should the parties fail to ameliorate the situation. The court should schedule a review hearing at the time it issues the therapy order and allow only the guardian ad litem to cancel it.

In most cases, the possibility of a court ordered, expensive evaluation should be sufficient sanction to motivate the parents to participate genuinely in treatment, but *the parties must be made to feel the strength of the court behind the order.* Sanctions for failure to comply must be explicit. The court should spell out the next stage of intervention (described below) and mandate the next stage of sanctions that can be expected,

### **3. Moderate**

Education and brief family therapy are not useful in cases of moderate alienation because, at this stage, the alienating parent's judgment is seriously impaired, and reason alone will not change irrational behavior. The alienating parent's interactions with and about the target parent are based on inner fears, not on observed behavior, and serve to reaffirm the belief that the target parent is bad. Additionally, external forces (individual therapists, attorneys, extended family) have become polarized on behalf of one party and serve to perpetuate the alienation.

The family system must be thoroughly evaluated by a professional, or a team of professionals, competent in the "family systems" approach. The evaluation must be of the entire system, including all adults directly involved in the life of the child, as described above. The evaluation must be generated by a single source or team; multiple individual psychological evaluations will not be able to advise the court as to the inter-relational issues that are affecting the functioning of the family.

The purpose of the evaluation is to 1.) identify the specific motivations and behaviors that are causing the divorce impasse or subsequent alienation; 2.) assess whether or not individual therapy might be beneficial for any party to help resolve intrapsychic issues; and 3.) develop a complete behavioral plan to intervene in the alienation process.

The assessment must be very specific as to motivation, beliefs and behaviors that are causing the alienation because once they are identified, the evaluator can make recommendations as to specific behavioral measures to counter the alienation. The recommendations must be sufficiently detailed and specific to be quantifiable.

Individual psychological evaluations and therapies, or "talking" group or family therapies are of minimal value in these situations, as they may only serve to perpetuate the alienation process.

The goal of appropriate treatment is not only to understand and resolve the divorce impasse but also to behaviorally reduce or eliminate alienation within the system.

We suggest the Individual Educational Plan (the IEP) as a model<sup>14</sup> and name it the Family Interaction Plan or the FIP. The Recommendations must be quantifiable and as specific and goal oriented as the IEP, and compliance must be targeted in much the same manner.<sup>15</sup> Compliance should be 70% in the first two months; 80% the third and fourth months; 90% thereafter. For example:

1. The child will see target parent X times per week without parental conflict at times of transition.
2. The alienating parent will encourage the child to telephone target parent X times per week and talk about positive things for a minute or two, depending on the age of the child and upon whether telephone calls to a hostile environment would be beneficial or not to the child.
3. During a visit, the alienating parent may not call or may call only "x" number of times.
4. The alienating parent will enable the child to send to target Parent a picture or painting in the mail once per week, with a positive note attached.
5. The child will bring home from visits a project done or a note to alienating parent about what was enjoyed during each visit.
6. The target parent will provide a photograph of himself to the child, and the alienating parent shall encourage the child to display it.

While the internal and the interactional issues which created the divorce impasse must be concurrently addressed in therapy, the court must focus on mandating specific behaviors to counteract the battle forces. The court must make the parents demonstrate that they can follow a plan whose ultimate goal is the mutuality of interest, **even if the parents do not feel it**. The alienating parent must become the welcoming parent, in deed, if not in thought.

Finally, the FIP must cover a specific and lengthy period of time during which the behavioral requirements of the parties and the child are explicitly laid out. This will provide the parties sufficient predictability to calm the system down and to allow each person to get used to the idea that different relationships between all the members are going to be established in a predictable manner. We suggest that the FIP cover approximately six months with an automatic court review at that time.

Procedurally, as noted above, at the first stage of intervention the guardian *ad litem* should be authorized by order of the court to require an evaluation. When the evaluation is commenced, the guardian *ad litem* simultaneously should request the court to schedule a court hearing to be held when the evaluation is complete. At the hearing, all parties could present to the court proposed remedial measures; the guardian *ad litem* would present the evaluators' reports and

recommendations which will likely include individual therapy to address the impasse and an FIP. The court should then issue a **detailed, quantifiable, specific order with sanctions enumerated**, as to the behavioral changes necessary to ameliorate the alienation and order the parties into therapy, if recommended.

At this stage of alienation and court intervention, there must be full and complete exchange of information. The court must be able to monitor the progress of the family through the behavior management therapy, and the behavioral management therapist will need to be able to communicate with any individual therapists involved with family members.

*Creative sanctions* must stand behind the court order as compliance at this stage will be motivated only by fear. The ultimate sanction is a change of custody, but there are many others to suggest. Obviously, an award of attorney's fees, the threat of weekend jail time, threats of transferring or assigning responsibility for the guardian *ad litem*'s fees, the cost of the evaluation, the costs of the child's therapy or even therapy for the other parent can all be used to motivate compliance in this early stage of intervention, subject always to the best interests of the child.

The court could shift both time (expand visitation or award cherished holidays and birthdays to the complying parent) and function (assign areas of traditionally joint parental authority such as medical care, education) in favor of the target parent, both as an appropriate sanction, and as possible preparation for the ultimate sanction, a change in custody.

The careful monitoring of such a detailed court order is an essential piece of this intervention, and we suggest that there be a *monitoring team* to do it. The guardian *ad litem* and a therapist, most likely the evaluator or the original post-divorce counsellor, should work together monitoring compliance. Such monitoring perforce will be largely through reports of the principles involved, the parents and the child, but can also be done by teachers, individual therapists, friends, etc. through reports to the guardian *ad litem*.

Teachers and babysitters can be asked to report on the emotional condition of a child before and after visits or to report on any information the child offers in school. A child can be asked where he keeps the photograph of the target parent as an indicator of the degree of comfort the child has in the display in the allegedly hostile environment.

The team approach is necessary to lessen the danger of the professionals becoming caught in the polarization of the family system. In extreme cases, the monitoring team may even want to have a third consultant monitor available to them to oversee the case as a more distant figure, not caught up in the everyday details these kinds of cases chronically present.

*If the parties fail to comply with the court orders there needs to be swift access to the courts and a serious second look at the custody situation.*

#### 4. The Parent Evaluation

If the above described interventions fail and the child remains virtually without relationship to the target parent, a different level of intervention is warranted. If the alienating behavior continues despite the education, the post divorce counseling, impasse resolution therapy; and the specific behavior management intervention, the court can conclude that the alienating parent does not have the capacity to foster a relationship with the other parent. It is an essential premise of this article that this is inherently harmful to the child when the affect is to alienate the child from one parent.

There is a considerable body of research which specifically examines the effects on children of single parent homes. A full review of this literature is beyond the scope of this paper; but, in general, the evidence is overwhelming that in father-absent homes, boys have lower self esteem, are more likely to be rejected by peers and may experience deficits in cognitive functioning. Girls may be less affected than boys in father-absent homes, but the research does show negative effects on girls' social and cognitive development.<sup>16</sup>

There is an additional body of research on reactions of children to high conflict divorce.<sup>17</sup> Children who experience a high degree of conflict between parents during divorce "are more likely to feel caught, and children who feel caught are more likely to experience depression, anxiety, and, to a lesser degree, participate in deviant behavior."<sup>18</sup>

The deliberate alienation by one parent of the other, unmodified by the numerous interventions described above, is psychologically harmful to the child within the meaning and intent of the *Perreault*<sup>19</sup> standard of a "strong possibility of harm".

It is important... to appreciate that a parent who inculcates a parental alienation syndrome in a child is indeed perpetrating a form of emotional abuse in that such programming may not only produce lifelong alienation from a loving parent, but lifelong psychiatric disturbance in the child.<sup>20</sup>

A change of custody must be contemplated as the *Perreault* standard has been met. The court must determine what custody location would be the most beneficial to the child, although in many of these cases the courts actually have to decide which placement is the least damaging to the child. A comparative determination of the custodial capacity of each parent must be done. The court or the parties may well have sufficient information at this point to litigate the issue of the best interests of the child. If not, parenting evaluations are recommended.

Knowing that the alienating parent does not have the ability to foster a relationship between the child and the target parent, the issue before the court will be, does the target parent offer the child sufficient parenting capacity to outweigh that very serious harm?<sup>21</sup>

If the target parent shows an adequate parenting ability as defined in the research which fits the needs of the child; and, if there is a reasonable likelihood that the target parent will foster the relationship of the child with the alienating parent, the court should seriously consider modifying

custody. If the target parent is not adequate, it becomes incumbent on the court to see if there are other family members or foster care available to take the child, someone to help the child create and maintain a relationship with each of his or her parents.

### **5. Severe: The Fully Enmeshed Child**

Very few children, between 1% and 5% of alienation cases,<sup>22</sup> become fully "enmeshed" with the alienating parent, where a child has incorporated as his or her own, the extremely hostile feelings of the alienating parent for the target parent. Once this happens, it is impossible to encourage or even force the child to be with the target parent; and no amount of evidence disproving the stated reasons for the hatred will serve to abate it. In some of these cases, the child's sense of self is dependent on the relationship with the alienating parent so that separation would cause the child to suffer an emotional breakdown of devastating proportions, if custody were awarded to the hated target parent. Attempts to switch custody would be fought against and undermined by the child to the child's maximum ability.

In these rare cases, the child must stay with the alienating parent, as it is not proper to use a child to punish a parent for misbehavior.<sup>23</sup> For whatever solace it is, the target parent must be assured that at some point children do seek out the other parent, and the relationship is not lost forever.

## **VII. WEAPONS**

"Weapons" are the *false* allegations by the alienating parent of behavior on the part of the target parent inimicable to the welfare of a child. The most commonly used weapons are false allegations of:

- threats of or actual domestic violence;
- sexual abuse of the child;
- physical abuse of the child;
- emotional abuse of the child;
- mental illness on the part of the target parent;
- alcoholism/drug abuse/homosexuality on the part of the target parent; or
- threats of moving or flight by the alienating parent.

Even when such an allegation is made in the context of high conflict litigation, it *must be taken very seriously on its face and fully investigated to determine its validity*. Each allegation accuses the target parent of behavior harmful to the child, and safety of the child is paramount. Neither the courts, lawyers, therapists or, perhaps, the parents, want to risk the welfare of a child when it is possible that the accusations might be true.

By their very nature, the allegations shift the emphasis of investigation onto the accused, the target parent. Several of the accusations are of very private behavior, which behaviors are difficult to prove and/or disprove.



Most domestic violence remains invisible despite the increase in awareness of the problem, and accusations of domestic violence or threats of domestic violence must be dealt with very seriously. However, under procedures outlined in NH RSA 173-B, an *ex parte* complaint of domestic violence taken to court together with a request for exclusive custody can give the complainant a considerable advantage in the legal system.

Attorneys are bound by their own ethical rules not to knowingly mislead a tribunal,<sup>24</sup> and advising a client to gain a tactical advantage by using the emergency procedures afforded under NH RSA 173-B may violate the Code of Professional Conduct even if the attorney is not involved in the presentation of the case to the court.<sup>25</sup>

Allegations of abuse of a child (physical and/or sexual) may arise from impaired parental judgment and are powerful weapons because of the intensity of feelings that arise from such allegations. However, the allegations may also be accurate. In all instances, but especially in the context of a custody battle, such allegations must be dealt with immediately by a competent professional who fully understands: 1.) sexual and/or physical abuse of children; 2.) family systems; 3.) divorce and custody litigation and the impact of lawyers and the legal system. If allegations of physical abuse arise and are sufficiently established to cause concern, the court or the parties involved must refer the case to the Division for Children and Youth Services under NH RSA 169-C.

If it is unclear that there is in fact abuse (sexual or physical), then the allegations may have been produced by the intensity of feelings about the divorce, fear of abuse and a misreading of particular situation. However muddled the waters are, the court must establish a factual basis upon which to proceed legally (either abuse did or did not occur) or the system will be paralyzed to the advantage of the alienating parent. Unless disproven, the allegations will cast a pall of potential harm to the child that no one person, institution or agency will be able to ignore, and an accused will always be treated as guilty unless proven innocent with regards to contact with the children.<sup>26</sup>

Accusations of alcoholism, mental illness or homosexuality also place a burden on the target parent to prove fitness to be with the child, and must be investigated as to their veracity and as to the effect or lack thereof on parenting capacity. Another weapon is the threat of moving, or the actual flight of the alienating parent. The court must immediately look to the motive, spoken or unspoken, for the move; if the motivation is to keep the target parent away, this is a clear red flag that the alienating parent will stop at nothing to achieve an exclusive relationship with the child.

No matter when a "weapon" shows up in the course of the litigation, the fact of an allegation must lead directly to a full systems evaluation by a qualified, competent professional. It serves as an indication that the alienating parent knows no bounds and that education, information and behavior management are insufficient interventions. The courts must look to the long term best interests of the child in terms of custody because the alienation process will continue. The use of a weapon should catalyze the court to order an evaluation of the custodial capacity of each parent. An expert must look at the entire system, assess the truth and veracity of the allegations,

assess the motivation for the allegations, assess the safety and welfare of the child and make recommendations as to the best placement and visitation arrangements for the child.

## **CONCLUSION:**

A partnership of judges, attorneys, and mental health professionals is critical in high conflict alienation cases. The judge has the power but is not readily available. Lawyers are available and have access to the legal process, but do not have a systems understanding. Attorneys easily can become part of a divorce impasse system, aggravating an already inflamed system. Mental health professionals must have a systems understanding and are available but do not have the power of the court or ready access to the legal process. A partnership is essential.

Attorneys must help their clients discern their long term interests as to their children and the emotional meaning behind a custody battle (hurt, revenge, fears).

Attorneys must hold the knowledge that they may be the sanest, most objective voice the client may hear in a divorce, and offer education about the long term importance of co-parenting and moving beyond the battleground. Attorneys must treat with caution and trepidation a client who sees a divorcing spouse as all bad and must avoid joining with the client in further escalating this belief. When necessary and appropriate, attorneys must refer clients to a mental health professional who is trained in family systems. Attorneys must recognize when they have been enlisted as active parties in the polarization alienation conflict and seek consultation so as not to further escalate the already inflamed process.

The courts must act decisively and explicitly in cases of high conflict divorce and alienation. The orders must be pragmatic and the grounds for decisions must be explained in terms that make it less likely that one party can claim a moral victory and the other feel the shame of defeat. The courts must use their knowledge and power to understand the family system, to recognize high conflict alienation cases and to make appropriate, timely and specific referrals and recommendations. By recognizing alienation in its early form, prevention of future harm to the child and family may well be possible. Intervention at any point along the continuum of harm is crucial to prevent further harm.

## **ENDNOTES**

1. Most of the research to date has shown that the mother is significantly more likely to be the alienating parent and the father the target parent. However, we note that there is a fair amount of controversy in the field regarding the conclusion that more mothers alienate than fathers, and wish to emphasize that in many cases we personally have seen, it is the father who alienates and the mother who is the target.

Because of the gender bias implied from using he and him to denote both sexes, the cumbersome nature of the him/her, he/she or s/he pronouns, and the grammatical errors in transforming he/she to they and his/her to their, this Article will simply alternate paragraphs, using the feminine in one paragraph and the masculine in the next when referring to a parent. If a child is referred to in the same paragraph, the child will be referred to by the other gender pronouns.

2. "[T]he persistent quality of the conflict combined with its enduring nature seriously endangers the mental health of the parents and the psychological development of the children. **Under the guise of fighting for the child, the parents may succeed in inflicting severe emotional suffering on the very person whose protection and well-being is the presumed rationale for the battle.**" (emphasis added). Johnston, J.R. B Campbell, L.E.G., *Impasses of Divorce* "Forward" by J. Wallerstein, p.ix (1988).

*See also*, Lamb, M.E.(ed.); *In Non-Traditional Families*, "Effects of Divorce on Parents & Children" by Hetherington, E.M.; Cox, M.; Cox, R. (1982); Wallerstein, J. & Kelly, J.S., *Surviving the Breakup: How Children and Parents Cope with Divorce*, (1980); J. Wallerstein & S. Blakesiee, *Second Chances: Men, Women and Children a Decade after Divorce: Who Wins, Who Loses and Why* (1989)

3. Hodges, William F. *Interventions for Children of Divorce* at 151 (1986).

4. Gardner, Richard, *The Parental Alienation Syndrome* (1992).

5. Johnston, *Impasses of Divorce* see Endnote 2.

6. "Families First" is a program currently mandated in several cities/counties in Georgia, Florida, Indiana, Texas, Illinois, Michigan, and Louisiana, among other states.

7. While there have been no studies as to the effectiveness of these programs in ameliorating or preventing alienation, in one such program, the participants themselves have reported high satisfaction with the program and have recommended that it be expanded. Zirps, Fotena A., Ph.D. *Children Cope with Divorce - Follow-up Study*, Cobb County, Families First, Atlanta, Georgia (1992).

8. The following states require mediation for custody cases: California (The Family Act, Sec. 4607, The Civil Code); Maine (19 MRS 214.4); North Carolina (7A NCRS 494); and, Wisconsin (767.001 WRS).

9. *Code of Professional Conduct* Rule 2.1.

10. *Code of Professional Conduct* Rule 3.1.

11. American Academy of Matrimonial Lawyers, Standards of Conduct Rule 2.25 **An attorney should not contest child custody or visitation for either financial leverage or vindictiveness.**

Comment: ..."Proper consideration of the welfare of the children requires that they not be used as pawns in the adversary process. If, despite the attorney's advice the client persists, the attorney should seek to withdraw."

Rule 2.27 **An attorney should refuse to assist in vindictive conduct toward a spouse or third party and should not do anything to increase the emotional level of the dispute.**

Comment ... "If...the client...asks the attorney to engage in conduct the attorney believes to be imprudent or repugnant, the attorney should attempt to convince the client to work toward family harmony or in the interests of the children. Conduct in the interests of the children or the family will almost always be in the client's long term interests."

12. American Academy of Matrimonial Lawyers, Standards of Conduct Rule 2.24 **When issues in a representation affect the welfare of a child, an attorney should not initiate communication with the child, except in the presence of the child's lawyer or guardian ad litem with court permission, or as necessary to verify facts in motions and pleadings.**

13. *Ross v. Gadwah*, 131 N.H. 391 (1988).

14. Individuals with Disabilities Education Act, 20 U.S.C. s.1400, et seq.

15. See N.H. Standards for the Education of Handicapped Students, Chapt. Ed. s.1109(1988)

16. Hedges, Intervention for Children of Divorce, see Endnote #3. There is not enough research on mother absence to reach conclusions at this point in time as the frequency of mother absence is so low that obtaining generalizable samples is virtually impossible.
17. Wallerstein, *Second Chances*, see Endnote #1.
18. Buchanan, C. & Maccoby, E., "Variation in Adjustment to Divorce: The Role of Feeling Caught Between Parents" April, 1991. Paper presented at the Biennial Meeting for the Society for Research in Child Development, Seattle Washington, April 18-20, 1991.
19. *Perreault v. Cook*, 114 N.H. 440 (1974); *Howard v. Howard*, 124 N.H. 267(1983).
20. Gardner, *The Parent Alienation Syndrome* at viii. See Endnote #4.
21. There is substantial research on adequate or "good-enough" parenting: Hedges, see Endnote #3; Shutz, B.M., Dixon, E.B., Lindenbergen, J.C., Ruther, N.J., *Solomon's Sword* (1989)
22. Clawar & Rivlin, page 142. Children Held Hostage: Dealing with programmed and brainwashed children. American Bar Association (1991).
23. *Webb v. Knudson*, 133 NH 665, 673 (1990). "Children are not chargeable with the misconduct of their parents and should not be uprooted from their home in order to discipline a recalcitrant parent." See also, *Houde v. Beckmeyer*, 116 NH 719 (1976).
24. *Code of Professional Conduct* Rule 3.3 **A lawyer shall not knowingly mislead the court or use illegal or false evidence.**
25. District Court Judges report an increasing number of custody cases being litigated in their courts under the guise of domestic violence proceedings. Domestic Violence Training for District Court Judges, January, 1990, personal conversation.
26. Because of the emotionally charged atmosphere sexual and physical abuse charges generate, we suggest that no one person be responsible for establishing the facts. Therefore, we suggest that advisory juries be empaneled to aid the judge in his findings regarding the allegations of abuse. NH RSA 519:23; NH RSA 491:16. This suggestion has been made by Judge Linda Dalianis of the New Hampshire Superior Court. See, *Bonser v. Courtney*, 124 N.H. 796 (1984). Only a Judge, not a Marital Master, could empanel an advisory jury.