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Parental Alienation: Remedies (Part Two of a Two-Part Series)

By Ashish S. Joshi

Parental alienation is a declaration of war by one parent against the other. The goal is clear: complete and utter annihilation of the target parent's relationship with the child. The behaviors that lead to alienation have become a pervasive aspect of divorce litigation.

1 Courts around the country, including Michigan², are increasingly showing concern about a parent's alienating behaviors, and where appropriate, have intervened. At times, the alienating parent does not realize that he or she is doing it. As Judge Michele Lowrance, of Cook County, Illinois³ recalled:

One day in court, a mother was seeking an increase in child support from her former husband. The father testified that his income had declined dramatically. After the case was over, I was riding down the elevator with the mother and the parties' teenage daughter. They did not notice I was there or did not recognize me out of my black robe. The mother was sharing details of the case with the daughter, as I would not let the daughter come into the courtroom. The mother was telling her what a liar and manipulator her father was, fully expecting the daughter to agree. I doubted this child would ever be able to hear her father's side of the story. Even if the father was lying, I wondered why the mother could not share her frustration with her sister, her neighbor, or even the cashier at the corner store; anyone but the child. I was saddened because I knew that sharing this information with the daughter might forever affect the way the girl viewed her father and ultimately how she viewed men in general. Would they all be liars and manipulators to her? The daughter had no way to defend her trust in her father against this onslaught; she would certainly question it and probably cease to rely on it. Could the mother be sure the daughter would heal from believing her father is manipulative, uncaring, and a liar? I don't believe the mother considered the long-

term effects. If she had, would she have intentionally hurt her daughter?⁴

Enmeshment—lack of proper boundary between a parent and the child—is simply one behavior of the alienation dynamic. The alienating parent has difficulty in separating himself from the child, and thinks of himself and the child as a “team.” In one case of severe alienation, where I was part of the legal team that represented the target parent, the alienating parent freely discussed her pre- and post-divorce extramarital affairs with her teenage children. After an evidentiary hearing on parental alienation, the trial judge found:

These boundary issues extended to [the mother’s] discussion with the children of her pre- and post- divorce extramarital affairs. [She] testified that she... had discussed these matters with the children as a way of ‘taking that away from him.’ When asked about it on cross-examination, [the mother] admitted these disclosures, but denied that it denigrated [the father] to be talking with the children about her search for a ‘strong man.’...[S]he wanted [the children] to know ‘why I built relationships with other men while still married to [the father]’ and that their son correctly reported to the counselor that ‘she was looking for love.’ [The father] testified that he had never discussed such matters with the children.⁵

The alienator was sentenced to jail. The court suspended her sentence provided she complied with specific court orders that were designed to contain, and hopefully, modify her alienating behaviors. ⁶ These cases are tough. While all of the professionals involved in the court system – lawyers, case evaluators, guardians ad litem, therapists - face a challenge when dealing with these cases, perhaps the toughest challenge faced is the one faced by the fact finder and the decision maker: the judge. As Judge Lowrance observed: “[parental alienation] cases are difficult, and...judges often have no love for them.”⁷ Judges find that these cases take a life of their own and things get “curiouser and curiouser” as the case unwinds.⁸ Why? First, some litigants who do not really understand the concept of alienation often misuse it in court.⁹ There is a difference between mental disorders such as oppositional disorder and actual parental alienation. Then there is the problem of affect: an alienator comes to believe what he or she is saying, and their presentation appears to be authentic. On top of it, the children – sometimes adolescents who appear to be doing very well in other spheres of their lives – often

support the alienator by telling the judge of their hatred for the target par-

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ent. And last but not least, when judges try to do what they believe might help the situation – say traditional therapeutic intervention – it does not work and they get exasperated with both parties (and sometimes the therapist too). It is not just maddening; at times it is surreal.

Fortunately, there is good research available that courts can turn to for the help that they need in these cases. As a starting point, it would do good to shatter some misperceptions that the bench (and the bar) too often believe. Judge Lowrance identified some of the misperceptions that courts commonly harbor about parental alienation¹⁰:

1. Parental alienation is not in the DSM-IV (or DSM-V) so it cannot be real.
2. It is too confusing to tell the difference between alienation and estrangement.
3. It is too difficult to test the credibility of children's statements.
4. Traditional therapy is the answer for these alienated relationships.
5. There is no reason for these cases to be fast tracked.
6. Alienation usually resolves itself if the target parent does what they are supposed to do.
7. Supervised access is an appropriate tool to use to alleviate the fears of an anxiety-ridden parent.

She also advised caution when judges are asked to order

supervised visitation:

Alienators use fear. They say things like 'The children are not safe with the other parent.' They tell me the other parent is something the child should worry about. Supervised visitation, which is often requested by an alienating parent, reinforces the message that the

target parent is too dangerous to be left alone with the child. When the court enters that order (unless you determine it is clearly warranted) it sends the message to the child that the court thinks the target parent is dangerous as well.¹¹

Top ten myths about parental alienation

Last year, in a research paper published in a peer-reviewed journal, Dr. Richard Warshak, a Clinical Professor of Psychiatry at the University of Texas Southwestern Medical Center, debunked the top ten fallacies and myths about parental alienation.¹² These myths are:

1. Children never unreasonably reject the parent with whom they spend the most time.
2. Children never unreasonably reject mothers.
3. Each parent contributes equally to a child's alienation.
4. Alienation is a child's transient, short-lived response to the parents' separation.
5. Rejecting a parent is a short-term healthy coping mechanism.
6. Young children living with an alienating parent need no intervention.
7. Alienated adolescents' stated preferences should dominate custody decisions.
8. Children who irrationally reject a parent but thrive in other respects need no intervention.
9. Severely alienated children are best treated with traditional therapy techniques while living primarily with their favored parent.
10. Separating children from an alienating parent is traumatic.

In discussing these strongly held assumptions and myths about parental alienation, Dr. Warshak explained that the "more often the fallacy is mentioned in professional presentations and publications, the more likely it becomes a woozle – a commonly accepted idea that lacks grounding in persuasive evidence yet gains traction through repetition to the point where people assume that it is true."¹³ He identified these myths about parental alienation that were commonly found in reports by therapists, custody evaluators, and guardians ad litem, in case law, and in professional articles.¹⁴ An assumption was determined to be a fallacy if it was "contradicted by the weight of empirical research, by specific case outcomes, or by [Dr. Warshak's]

more than three decades of experience evaluating, treating, and consulting on cases with parental alienation claims.”¹⁵

These myths fall into two categories: “those that predominantly relate to the genesis of parental alienation and those concerned with remedies for the problem.”¹⁶ For the purposes of this article, I will focus on the latter myths.

Myth # 1 - Courts cannot enforce parenting time against an alienated adolescent’s wishes.

Consider two scenarios:

Scenario 1: A judge who understood that a 13-year old’s decision to sever his relationship with his father reflected impaired judgment but nevertheless acquiesced to the boy’s demands because, “He is now of an age where, even if he may be too immature to appreciate what is best for him, he cannot be physically forced to remain where he does not want to be.”¹⁷

Scenario 2: A judge who, faced with a similar situation, addressed the teenage boys: “I want you gentlemen to understand that it is the court’s order, not your parents’ order that you and your parents are abiding by. And the consequences fall on your parents if there is a failure to comply, so I want

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you to know that while you think you are of an age where you can make these decisions or should be able to make these decisions, you’re not yet.”¹⁸

Which orientation, of the two mentioned above, is likely to stop alienating behaviors and save a fast-deteriorating parent-child relationship? Lawyers, guardians ad litem, parenting coordinators, therapists, parents, and even judges feel stymied when adolescents refuse to follow court-ordered parenting time schedule. The alienating parent is only too happy to point out: I have encouraged my teen to go and see the other parent but he just won’t do it. What to do?

One thing to do would be what a trial judge recently did in Nebraska.

¹⁹ In stripping a mother of custody and awarding custody to the father, the court found that the mother encouraged the children to violate the parenting plan and was alienating them from their father. In response to the mother’s argument that it was up to her 15-year old daughter to decide whether to see her father, the trial court stated:

I'm going to tell you the law in Nebraska is very clear, 15-year-olds don't make the decision about whether they attend visitation time with their parents or not...If [the daughter] suddenly decided that she didn't like to go to school, for example, or that she didn't like one of her teachers or that she didn't want to do something like that, or that she didn't want to go to a medical appointment, I'm going to guess that you would find a way to make sure that she got there regardless of whether she didn't want to or not....[A]s a parent, you're under an order for parenting time to take place.²⁰

There are plenty of things that courts can do. But one thing that never succeeds is to attempt to "get through" to the alienating parent: As judges we all develop a 'speech' that we give parents that are interfering in the other parent's relationship or acting in other damaging ways to their children. We too often think that our 'speech' is so good we could get through to a brick. In alienation cases, it is different. Never base your strategy or concentrate your efforts on getting through to the alienating parent. They are not only committed to resisting change, but often they believe in their perception. I have made this mistake myself and I can tell you that they have no epiphany. It is far more effective to attempt to change behavior by forcing them to fear consequences by the court.²¹

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Courts however need not feel helpless in the face of oppositional behavior from alienated teenagers. Research studies have demonstrated that most children's protests evaporate when reunited with a rejected parent.²² Adolescents, like adults, need to understand that they are not above the law or beyond its reach. Teenagers comply with many rules and expectations that are not of their own choosing. "It is an error to assume that they do not benefit from an assertion of authority on the part of the court and their parents."²³ As Dr. Warshak points out, despite their more mature cognitive capacities compared to younger children, adolescents are suggestible, to external influence and highly susceptible to immature judgments and

behavior.²⁴ Instead of giving into children's demands, the court can and should order an intervention to assist children in adjusting to court orders that place them with their rejected parent.²⁵ There should be a clearly outlined set of consequences for the alienating parent enabling violation of court orders. As a sanction for the alienating parent's actions, courts have awarded the target parent additional parenting time.²⁶ Depending on the circumstances, maybe the court can assess a monetary sanction for each missed visit.²⁷ The Nebraska Court of Appeals recently affirmed a trial court's decision that sanctioned a mother for violating several court orders including a parenting plan.²⁸ The trial court gave the mother suspended jail sentences of 48 hours and 30 days. It gave the mother an opportunity to purge the 48-hour jail sentence if she wrote two statements – "I love my child more than I hate her father" and "I will never disobey an Order of this Court again" – 100 times each and provide them to the Court.²⁹ The Court also gave the mother an opportunity to avoid the 30-day jail sentence if she did not make disparaging remarks about the father in the child's presence and stayed more than one mile away from the child's school on days the father had parenting time. An additional jail sentence of 48 hours could be purged if the mother wrote and delivered a letter to the child's school explaining the modified parenting time and that she was not to be present at school during the father's pick up and drop off times. The appellate court not only affirmed the trial court's decision but pointed out to the mother when she repeatedly argued that there was no provision in the prior orders which prevented her from being at the child's school:

This argument misses the point, however, which is that [the mother's] presence at school on these occasions and her encouraging [the child] not to leave with her father interfered with [the father's] ability to exercise his parenting time.³⁰

Courts can and should enforce parenting plans. Judges can subtly compel the alienating parent to get involved in solving the problem of a child who doesn't want to visit the target parent. When faced with an alienating parent who professes support for the parenting plan but claims that he or she is helpless and cannot make the child visit the other parent, here's what Judge Lowrance recommends:³¹

Ask the alienating parent: 'Are you concerned about your child not going on visits?'

Ask the alienating parent: ‘How have you changed your conduct when you see your encouragement is not working?’

Ask the alienating parent: ‘What have you done differently to show your concern?’

The formula for the questions is: Guidance – Boundaries – Incentives – Consequences....

What you want to look for is: they are either lying about their good faith to foster visitation or they are a completely ineffective parent. So it may be that unless there is a transfer of custody, the situation can’t be turned around.

Myth # 2 - Alienated children who have irrationally rejected a parent but thrive in other respects need no intervention.

Alienated children can do well in other spheres of their lives. They can excel academically, win athletic competitions, avoid drugs, win school elections, act polite and help grand- mas cross roads. At the same time, they can “sustain significant psychological impairment evident in their relationships with friends, their favored parent, and legal authorities.”³² The sequela of alienation, over a period of time, bleeds into other relationships that the alienated children have. It affects their “global thinking about others as allies or enemies, contempt for those who see things differently, feelings of entitlement in personal relationships, and avoidance of conflict.”³³ As parents, we teach and encourage our children to work through their conflicts. Judges encourage litigants to mediate. Our entire society is based upon the premise that rational human beings should attempt to manage and hopefully resolve a conflict. Alienated children who have been empowered to reject a parent think differently. “When conflicts arise with friends, alienated children who have been empowered to reject a parent are apt to do the same with friends: they avoid conflicts by abruptly ending friendships rather than practicing skills to manage conflict and sustain relationships.”³⁴

Dr. Warshak presents three reasons for courts to intervene on behalf of alienated children despite their apparent success in areas of life unrelated to the parent-child relationship:

First, children’s apparent good adjustment may be superficial or coexist with significant psychosocial problems. Second, regardless of adjustment in other spheres, the state of being irrationally alienated from a loving parent is a significant problem in its own right and is accompanied by other indices of psychological

impairment. Third, growing up apart from and in severe conflict with an able parent risks compromising children's future psychological development and interpersonal relationships.³⁵

Good grades, friends, and other achievements should not discourage a court to intervene to protect a parent-child relationship that is at risk due to alienating behaviors.

Myth # 3 - Alienated children are best treated with traditional therapy while living primarily with their favored parent.

Sir John Mortimer, the noted lawyer and creator of the "Rumpole of the Bailey" series, was once asked about his writing habits on a radio show. He told the interviewer that before he begins writing, he has a glass of champagne. It set his brain racing. The interviewer's response was: "Are you having counseling for that?"

As family law practitioners, we often advocate counseling or therapy to our clients. Often, judges' first tool of choice in trying to resolve a conflict is to send parties to therapy. Kids don't want to see the mom or dad? Go work it out in therapy. In alienation cases, research demonstrates that traditional psychotherapy, while children remain under the care of their favored parent, is unlikely to repair the strained parent-child relationship and in fact, may make things worse.³⁶ Why?

One reason why phobia reduction techniques fail to overcome children's refusal to spend time with a parent is that most of these children, except preschoolers, do not really fear their rejected parent. If they act frightened of the parent, often this is a ruse to avoid contact. The lack of genuine fear is evident in the children's uninhibited denigration, expressions of hatred, and disrespect toward the rejected parent, as opposed to the obsequious or withdrawn behavior typical of children's interactions with a feared adult.³⁷ Traditional therapy can magnify and solidify the animosity and hatred that the alienated child feels towards the target parent. As Judge Lowrance found:

I have seen traditional therapists allow the child to determine how long it will be (if ever) before they agree to see the target parent. Because the child is aligned with the alienating parent, they are emotionally required to keep rejecting contact with the target parent. Remember, alienated children are often told that if they are nice to the target parent, it could be used 'against' them in court.³⁸

Effective therapy, in these circumstances, is reunification therapy. Reunification therapy, in contrast to traditional therapy, activates old positive memories and more importantly challenges distorted thinking. It is not uncommon to see false memories implanted in a child in a severe alienation case. In some cases of severe alienation, therapy may have to be suspended and the courts may have to think about other “effective interventions that provide transformative experiences that help children relinquish negative attitudes while saving face.”³⁹ If therapy is not helping and may aggravate the situation, the therapist may feel ethically bound to inform the court that treatment should be discontinued.⁴⁰

Myth # 4 - Separating children from an alienating parent is traumatic. Despite the research that demonstrates that alienation abates when children are required to spend time with the parent they claim to hate or fear, some experts mislead courts into believing that dire consequences will befall the children if the court enforces parenting time against a child’s wishes. Courts would do well to put these predictions to a Daubert test. Such predictions are highly vulnerable to “reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory. No peer-reviewed study has documented harm to severely alienated children from the reversal of custody.”⁴¹ On the other hand, there are studies of adults who were allowed to reject a parent and who later regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents.⁴²

Experts who advocate against separating children from an alienating parent usually rely on the so-called attachment theory.⁴³ The research behind such predictions of doom and gloom cannot be accurately applied to alienation cases. It primarily concerns children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other – often severely traumatic – reasons.⁴⁴ When faced with such experts, attorneys should challenge the experts to “unpack evocative jargon” and challenge the science behind such predictions.⁴⁵ “The lack of empirical support for such pessimistic predictions can be contrasted with the benefits of removing a child from the daily care of a disturbed parent whose behavior is considered psychologically abusive.”⁴⁶ At times, separating the child from an alienating parent

coupled with effective intervention measures is the only way that a court can remedy alienation.⁴⁷

Even changing custody may not be enough in some cases. In a Michigan case, the trial court, upon finding alienation amongst other things, awarded the father sole physical custody.⁴⁸ The Michigan Court of Appeals affirmed the trial court's custody decision.⁴⁹ Upon the change of custody, the alienating parent retained liberal parenting time. The reaction was swift and horrific. The alienating parent manufactured allegations of sexual abuse against the target parent, orchestrated investigation of abuse by authorities in Colorado and Michigan, abducted the children and fled to Missouri, sought refuge at a

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“safe house” in Missouri, dyed the children's hair and limited the children's ability to go outdoors to avoid being found.⁵⁰ Ultimately, the alienator was arrested and the children returned to the target parent. The trial court, finding the alienating parent's behavior to be severely contemptuous, ordered the parent to serve 90 days in county jail. Importantly, the court noted that it did not enforce parenting time orders during periods of incarceration.⁵¹

Alienators “going postal:” Unfair and unjust criticism of judges. Parental alienation cases often demand hard-hitting decisions. A judge, after reviewing the record and weighing admissible evidence produced at a trial, may be required to fashion an appropriate remedy. Depending on the circumstances of the case, the remedy could be reunification therapy, change of custody, and/or jail time for violation of court orders. When faced with an adverse ruling, it is not uncommon for an alienator to lash out at the court and the professionals involved by distorting the facts, refusing to acknowledge the severe harm caused by parental alienation and disparaging and criticizing the court – all outside the confines of appellate process.

In this day and age of social media, lines are blurred between free speech and cyber-bullying. Last summer, the President-elect laid into U.S. District Judge Gonzalo Curiel. The Judge was publicly criticized of being incapable of adjudicating a case because he was “Mexican.” The President-elect labeled the judge a “hater,” and went

on to state in the media: “I’m telling you, this court system, judges in this court system...ought to look into Judge Curiel, because what Judge Curiel is doing is a total disgrace.”⁵² The “traditional press, the blogosphere, and Twitter all went crazy”⁵³; Judge Curiel, of course, remained silent. Under the ABA’s Model Code of Judicial Conduct, Rule 2.10(A), “a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.”⁵⁴

The Michigan Code of Judicial Conduct restricts judicial response more absolutely than the ABA Model Code. Canon 3(6) mandates that “a judge should abstain from public comment about a pending or impending proceeding in any court, and should require a similar abstention on the part of court personnel subject to the judge’s direction and control.” In face of stinging criticism – on Facebook, Twitter, blogs, websites, media – judges stay silent. Court staff and personnel stay silent. “That leaves to us, the lawyers, the task to speak up on behalf of judges unfairly accused.”⁵⁵ To assist the state and local bar associations in coordinating responses to inaccurate and unjust criticisms, the ABA has prepared a guide called Rapid Response to Unfair and Unjust Criticism of Judges.⁵⁶ The guide, written by the prior Standing Committee on Judicial Independence, emphasizes the critical need to respond to attacks in a timely manner and appropriate manner.

The ABA’s goal is to:

To provide a mechanism through which a bar association and members of other constituencies can provide timely responses to the serious, unjust criticisms of judges and the judiciary or to misunderstandings about the role of a judge or the judicial system. The focus of these responses is to provide the public with information to help them better understand the legal issues related to a specific situation, including the role of judges, the application of the law, and the restrictions and responsibilities placed on judges in the canons and rules.⁵⁷

As Justice Sandra Day O’Connor reminded us, “where democracy depends on the separation of powers and vital and independent judiciary – [c]riticism is fine; retaliation and intimidation are not.”⁵⁸ It’s time for the State Bar of Michigan and/or the Family Law Section to form a taskforce that can coordinate a response, if one is required, to inaccurate and unfair attacks on our judiciary.

About the Author

The author is a trial lawyer and the owner of the law firm Lorandos Joshi, P.C. Mr. Joshi's practice focuses on complex litigation including cases involving parental alienation and international divorce. Mr. Joshi has represented and counseled clients across the nation and internationally on the issue of parental alienation. He has been admitted to practice law in Michigan, New York, District of Columbia and India. Mr. Joshi serves as the Editor-in-Chief of Litigation, a journal published by the Section of Litigation of the American Bar Association.

Endnotes

1 See Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children* (American Bar Association Press 1991).

2 See e.g. *Moir v. Moir*, Docket No. 323725 (Mich. COA, Feb. 11, 2016), *McNutt v. McNutt*, Docket No. 328214 (Mich. COA, Dec. 15, 2015), *Brady v. Brady*, Docket No. 326396, (Mich. COA, Sept. 22, 2015), *Webbe v. Webbe*, Docket No. 325847 (Mich. COA, July 30, 2015), *Poag-Emery v. Emery*, Docket No. 318401 (Mich. COA, April 22, 2014).

3 Michele Lowrance is a former domestic relations judge in Cook County, Illinois. She has written and presented extensively on the topic of parental alienation and judicial interventions.

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54 Id.

55 Id.

56 [www.americanbar.org/content/dam/aba/administrative/judicial_inde-](http://www.americanbar.org/content/dam/aba/administrative/judicial_inde-pendence/rapid_response_pamphlet.pdf)pendence/rapid_response_pamphlet.pdf.

57 Id.

58 Laurence Pulgram, supra (citing Sandra Day O'Connor, A Fair, Impar-tial and Independent Judiciary, 8, Nat'l Voter, Feb. 2008)). November 2016

29 Michigan courts have ordered alienators to write such apology letters as well. See Tafe v. McClenton, Docket No. 318713 (Mich. COA, De- cember 9, 2014).

1. 30 Cohrs v. Bruns, supra at 10.
2. 31 Lowrance, supra, at pg. 515-516.
3. 32 Richard Warshak, supra at 242.

4. 33 Ibid.

5. 34 Ibid, (citing Joan B. Kelly & Janet R. Johnston, *The Alienated Child*: