

**ALIENATION- ANALYZING/ REASSESSING THE PROBLEM AND
SOLUTIONS**

Presented by:

KELLY AUSLEY-FLORES, *Austin*
Ausley, Algert, Robertson & Flores

DARCY ELIZABETH LOVELESS, *Denton*
Loveless & Loveless

Written and Presented by:

JACQUELINE SMITH, *Houston*
Jacqueline Smith & Associates, P.C.

State Bar of Texas
43rd ANNUAL
ADVANCED FAMILY LAW COURSE
August 7-10, 2017
San Antonio

CHAPTER 39

Acknowledgments

A very special thanks to Samantha E. Frazier for her detailed assistance in citing, research, and footnoting. Your assistance was greatly appreciated.

KELLY AUSLEY-FLORES
AUSLEY, ALGERT, ROBERTSON & FLORES, L.L.P.
Attorney at Law
3307 Northland Drive, Suite 420
Austin, Texas 78731
(512) 454-8791
(512) 454-9091 Facsimile
kflores@ausley-algert.com
www.ausley-algert.com

EDUCATION

Texas Tech University, B.B.A. in 1987, cum laude
Texas Tech School of Law, J.D., 1995, cum laude

PROFESSIONAL ASSOCIATIONS AND HONORS

Board Certified by Texas Board of Legal Specialization, Family Law, since 2000
Fellow, American Academy of Matrimonial Lawyers
Member, Texas Academy of Family Law Specialists
Named Texas Super Lawyers® - Rising Stars® Edition (Texas Monthly, 2004 and 2005)
Named Best Lawyers' Austin Family Law Lawyer (2012 through the present)
Member, Collaborative Law Institute of Texas
Member, International Academy of Collaborative Professionals
Member, State Bar of Texas (Family Law Section)
Served on Family Law Council 2012-2017
Member, College of the State Bar of Texas
Member, Austin Bar Association (Family Law Section)
Member, Texas Bar Foundation, 2004 through the present
Member, Pro Bono College of the State Bar of Texas, 1999 through the present
Recipient, 1998 and 1999 Pro Bono Award, Volunteer Legal Services of Central Texas

CAREER PROFILE

Practiced family law with Ausley, Algert, Robertson & Flores, L.L.P. since August, 1995 and became a partner in December, 2001.
Trained in Collaborative Law and trained as a family law mediator.
Volunteer, Volunteer Legal Services of Central Texas since 1996 as a mentor and lawyer.
Volunteer, Texas Advocacy Project previously Women's Advocacy Project since 2004 as a lawyer.
Obtained certification as a specialist in the area of family law through the Texas Board of Legal Specialization (December, 2000).

PERSONAL

Born February 23, 1965, in Lubbock, Texas and raised in Austin.
Married to Joe Flores - two children.
Member, First United Methodist Church, Austin.

AUTHOR and LECTURER

“Closing the File,” Advanced Family Law Seminar - Boot Camp, State Bar of Texas, August 17, 2003.

“Post Trial Basics & Closing the File,” Advanced Family Law Seminar - Boot Camp, State Bar of Texas, August 8, 2004.

“Effective Use of ADR in Family Law Cases,” 2005 Poverty Law Conference, Texas Lawyers Care, March 30 - April 1, 2005.

“Closing the Friendly and Unfriendly File,” Advanced Family Law Drafting Course, State Bar of Texas, December 8-9, 2005.

“Traveling Light: Collaborative Law Without Paralegals or Assistants,” Collaborative Law Spring Conference 2008, State Bar of Texas, February 28-29, 2008.

“Collaborative Law,” Alternative Dispute Resolution Course, University of Texas Law School, Professor Cynthia Bryant, March 6th, 2008.

“Child Support (What Do Judges Do in Various Counties) Above & Below the Guidelines, the High Income Earners (Death of the Obligor),” Marriage Dissolution Institute, State Bar of Texas and Family Law Section, April 17-18, 2008.

“Closing the File,” Summer School - State Bar College, State Bar of Texas, July 17-19, 2008.

“Closing Documents Other than QDROs,” Advanced Family Law Drafting Course, State Bar of Texas, December 4-5, 2008.

“Putting Agreements on Paper,” Collaborative Law Course 2010, State Bar of Texas and Collaborative Law Institute of Texas, March 4-5, 2010.

“Closing the File,” Advanced Family Law Drafting Course, State Bar of Texas, December 9-10, 2010.

“We’re Done! (Or are we?) - Closing the File,” Advanced Family Law Drafting Course, State Bar of Texas, December 5-6, 2013.

“Closing the File 101,” Marriage Dissolution 101 Course, State Bar of Texas, April 23, 2014.

“Closing the File 101 – The Long Good-Bye,” Marriage Dissolution 101 Course, State Bar of Texas, April 8, 2015.

“Proving Significant Impairment,” Advanced Family Law Seminar, State Bar of Texas, August 1-4, 2016.

LECTURER

“Creative Discovery,” Family Law Essentials, Family Law Council, Nacogdoches, Texas, June 4, 2004.

“Post Trial Basics & Closing a File,” State Bar Convention - Boot Camp, June 25, 2004.

“Closing Out Your File,” Williamson County Family Law Seminar, October 29, 2004.

“How to Study for and Pass the Board Certification Exam,” Advanced Family Law Course, State Bar of Texas, August 10, 2005.

“Trends in Family Law,” 2009 Statewide Assistant Attorneys General Conference, Austin, Texas, July 10, 2009.

“Changes in SAPCR Issues and Trends for the Future,” 35th Annual Advanced Family Law Course, State Bar of Texas, August 3-6, 2009.

“Collaborative Law,” Travis County Family Law Section Luncheon, January 6, 2010.

“The Paradigm Shift,” Nuts & Bolts of the Collaborative Process Course, State Bar of Texas and the Collaborative Law Institute of Texas, March 3, 2010.

“Characterization & Tracing: An Overview,” Advanced Family Law Course, State Bar of Texas, August 4, 2011.

“Know When to Hold Them, Know When to Fold Them: Settlement Agreements, Rule 11 Agreements, Informal Settlement Agreements and Mediated Settlement Agreements,” Author: Jimmy Vaught, Marriage Dissolution, State Bar of Texas, April 19, 2013.

“Know When to Hold ‘Em, Know When to Fold ‘Em, Accepting and Firing Clients,” The Austin Bar Family Law Section Spring CLE, May 13, 2016.

COURSE DIRECTOR/PLANNING COMMITTEES:

Planning Committee - Collaborative Law Course 2010

Planning Committee - Advanced Family Law Course 2010

Course Director - Family Law Boot Camp 2010

Planning Committee and Course Director, Marriage Dissolution 101 Seminar, April, 2013.

Planning Committee - Advanced Drafting Course 2013

Planning Committee – Advanced Family Law Course 2017

DARCY E. LOVELESS

LAW FIRM: LOVELESS & LOVELESS,
Attorneys at Law, L.P.
218 North Elm Street
Denton, Texas 76201
940/387-3776 940/898-0196 (Fax)
www.cmloveless.com

PRACTICE AREAS:

Family Law, Collaborative Law

PANELIST:

“Mock Trial: Testimony and Examination Issues with Mental Health Professionals”, AFCC 52nd Annual Conference: Children in the Court System: Different Doors, Different Responses, Different Outcomes, 2015

AUTHOR AND LECTURER:

“So You’ve Been Appointed to Represent a Child – What’s Next?”, Tarrant County Summer Bar Seminar, 2005

“Waiver Divorce”, Denton County Practice Skills Course, 2003.

CO-AUTHOR AND LECTURER:

“Case Autopsy”, Collaborative Law Institute of Texas Spring Conference, 2007

“Rebutting the JMC Presumption – Child Preferences”, Advanced Family Law Course, 2003.

CO-AUTHOR

“Meeting YOUR Interests: Collaborative Law and Other Methods of Dispute Resolution”, for Denton County Collaborative Professionals, Inc., 2009;

“Rights and Duties of Parents, Grandparents, and Non-Parents,” Advanced Family Law Course, 2002;

“State Retirement: Dividing and Surviving Under the Government Code,” Advanced Family Law Course, 2001.

DIRECTOR/OFFICER/MEMBER:

Member, State Bar of Texas;

Member, Denton County Collaborative Law Professionals, Inc. (President, 2014-2015)

Denton County Bar Association (President, 2009-10; Officer 2005-2009; Director 2002 – 2005)

Member, American Academy of Matrimonial Lawyers

Member, Texas Young Lawyer's Association; 1999-2011

Member, Greater Denton County Young Lawyer's Association (President, 2004-2005; Officer 2002-2004;
Director 2000-2002)

Member, Family Law Section Denton County Bar Association (Chair, 2003-2004)

EDUCATION:

American University, B.A. 1996

Baylor University School of Law, J.D. 1999

CERTIFICATION:

Board Certified Family Law Specialist by the Texas Board of Legal Specialization, 2004

JACQUELINE SMITH

Jacqueline Smith & Associates, P.C.
735 Yale Street
Houston, Texas 77007
Telephone: (713) 863-0003
Facsimile: (713) 863-9303
Website: jacquesmithlaw.com

EDUCATION:

University of Houston Law Center
Doctorate of Jurisprudence, December 1984

University of Wisconsin
Graduate Program – Educational Psychology, May 1974

University of Wisconsin
BA, August 1972

AREA OF PRACTICE:

Board Certified – Family Law, Texas Board of Legal Specialization

PROFESSIONAL ACTIVITIES:

Family Law Council- Member 2016-2017
State Bar of Texas, Member- 1985- present
State Bar of Texas, Family Law Section, Member
Fellow: American Academy of Matrimonial Attorneys- 2015- present
Texas Family Law Council 2016 – to present
Texas Academy of Family Law Specialists, Member 2010- present
Gulf Coast Family Law Specialists, Board Member 2016-present, Member 2010-present
Burta Rhoads Raborn Inn of Court, Master and Team Leader
Houston Bar Association, Member
Houston Bar Association, Family Law Section, Director, 1994-1996
Collaborative Law Institute of Texas, Member
The Houston Family Law Group, Co-Founder and Member
Ad Litem Ad Hoc Sub-Committee
Family Courthouse Committee, Member
Family Law Judicial Liaison, Committee Member
Drug Court, Family Law, Board Member, Secretary/Treasurer

PROFESSIONAL HONORS:

President's award BRR Inns of Court 2016
Houston Top Lawyers 2014
Selected by Peer Recognition as a Top Lawyer in Houston, August 2013
Listed as America's Most Honored Professional Top 5%, 2011
BV Distinguished Rating, Martindale-Hubbell, 2010
Listed as one of Houston's Top Lawyers for the People, 2009
Listed as a Top Family Lawyer by H Magazine, February 2008
Listed as one of Houston Top Family Law Attorneys, September 2007
Listed as a Top Family Lawyer by H Magazine, August 2006
Recipient of Alex Award for Legal Excellence, NAACP, 2001

Top 100 Family Lawyers of Harris County, Texas, 2000

Recipient of the Business Associate of the Year Award, American Business Women's Association, 1995

PUBLICATION AND SPEAKER AND LECTURES:

Author and Speaker: "Alienation- Analyzing/Reassessing the Problem and Solutions", Advanced Family Law 2017

Author and Speaker: "Office Management from Start to Finish", Marriage Dissolution 101 2017

Author and Speaker: "Parental Alienation: What It Is and What It Isn't," Advanced Family Law 2016

Speaker, "How to Identify Clients and Keep Them," Houston Family Law Group, February 2016

Speaker, "Pro Bono Family Law Cases," University of Houston Law Center, January 2014

Speaker, "Collaborative Law," Houston Family Law Group, February 2014

Author and Speaker, "Temporary Orders," Houston Family Law Group, July 2013

Author, "Ad Litem Appointments and Responsibilities," South Texas College of Law

Author, "Preparing for and Handling Temporary Orders Hearings," Houston Bar Association, 2009 Family Law Institute

Author, "Injunctions and Enforceability of Parenting Plan," University of Texas, 2007

Co-Author with Norma Trusch, "Making Pleadings and Orders Conform to What the Legislature Has Wrought," Advanced Family Law Drafting, 1995

CIVIC ACTIVITIES:

Houston Volunteer Lawyers Program, Legal Lines – Family Law Expert and Liaison

Houston's Food Bank – Volunteer Supervisor

Casa De Esperanza – Volunteer Foster Parent

Casa De Esperanza – Battered Children Shelter – Volunteer

Wheeler Avenue Baptist Church – Volunteer in Accounting Department and Coordinator of Children's Church

Delta Sigma Theta Sorority - Member

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ALIENATION - ANALYZING / REASSESSING THE PROBLEM AND SOLUTIONS

I. INTRODUCTION

How many times has a client said to you, “my child’s mother is poisoning my kid against me? He refuses to talk to me or visit.” Conversely, can you remember the number of times you have heard, “I have tried to get Devante’ to go with his father, but he refuses to do so? I cannot physically pick him up and put him in the car.”

In each of these scenarios, our immediate concern is whether a parent is influencing the child’s attitude and behavior against the other parent. Is this a question of parental alienation?

Dr. Richard A. Gardner, distinguished child psychiatrist, introduced the term, “Parental Alienation Syndrome” (PAS) in the mid-1980’s¹. He created the phrase PAS to describe a disturbance between some children and their parents because of divorce or custody proceedings.

According to Dr. Gardner, children who exhibit signs of PAS join forces with the favored parent to launch a campaign of denigration against the other parent. Richard A. Warshak noted psychologist in this field describes the phenomenon as a disturbance in which children, usually in the context of sharing a parent’s negative attitude, suffer an unreasonable aversion to a person or persons with whom they formally enjoyed normal relations or with whom they would normally develop affectionate relations.²

Is Devante’ refusal to visit with his father the result of parental alienation, or the consequences of bad behavior by his father? As attorneys, it is our responsibility to attempt to identify the root of the problem and further assist our clients and the courts in resolving this issue.

This paper will explore the options available to attorneys when Parental Alienation is a concern in a case.

¹ Richard A. Warshak, *Parental Alienation: Overview, Management, Intervention, and Practice Tips*, 28 J. AM. ACAD. MATRIM. LAW. 181 (2015).

² RICHARD A. WARSHAK, *DIVORCE POISON: HOW TO PROTECT YOUR FAMILY FROM BAD-MOUTHING AND BRAINWASHING* 28 (Harper Collins) (2010).

³ RICHARD A. WARSHAK, *DIVORCE POISON: HOW TO PROTECT YOUR FAMILY FROM BAD-MOUTHING AND BRAINWASHING* 26 (Harper Collins) (2010).

II. IDENTIFIABLE CHARACTERISTICS OF PARENTAL ALIENATION SYNDROME?

Dr. Gardner could identify similarities in children who rejected a parent during divorce and custody disputes. Many of the children expressed a deep seeded hatred for them and sometimes the animosity was directed to the extended family of the parent as well.³ When asked to explain the rationale for their distain, the children provided answers that were trivial or absurd. “I hate my mother because she embarrassed me at Little League practice when she sprayed us with stuff that killed bugs,” stated one child.⁴ Another child confessed his hatred toward his father was the result of “Daddy always making me sit up at the dinner table.”⁵

The experts in the field agreed that many of the children shared similar behavior characteristic; however, mental health professionals outright rejected the premise that the disturbance rose to the level of a separate diagnosis. They believe that Gardner’s position lacked the empirical data to support his sweeping findings, and his conclusions were based on limited research in the area.⁶

The Diagnostic and Statistical Manual of the American Psychiatric Association 5th Edition (DSM-5) does not provide a specific diagnostic described as “parental alienation”.⁷ Notwithstanding a formal diagnosis, most experts agree that many of the severely alienated children exhibit certain traits initially identified by Gardner.⁸ Richard A. Warshak, divides the traits into three categories: behavioral, emotional and cognitive.

A. Behavior Impairments

Children suffering from alienation wanted little or no contact with the poisoned parent. Their behavior toward the alienated parents was hostile, defiant coupled with extreme disobedience.⁹ They rejected the parent and often the extended family. These children would often defy the court orders.

B. Emotional Impairments

Most children experiencing severe alienation showed little or no affection or appreciation toward the poisoned parent. One child punished her mother by buying the most expensive items in a restaurant and then

⁴ Anne Turner Beletic, *Parental Alienation Syndrome*, 2000 *ADVANCED FAM. L.* 2 (2000).

⁵ Warshak, *supra* note 2.

⁶ *Id.*

⁷ AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 715 (5th ed. 2013).

⁸ Warshak, *supra* note 2.

⁹ Richard A. Warshak, *Managing Severe Cases of Parental Alienation*, in 38th Annual Advanced Family Law Course 59, 1 (2012).

refused to eat it.¹⁰ Often times, these children remain aloof toward the alienated parent or meet that parent with contemptuous behavior, even though they enjoyed a close relationship with that parent in the past.¹¹ Warshak provided an example of a little girl who called her mother a retard and “butthole”. When her grandmother who she previously enjoyed a wonderful relationship reprimanded her, she stated she didn’t like her grandmother anymore, either.”¹²

C. Cognitive Impairments

These children’s thoughts and statements toward their parent usually “reflect cruel, shallow, and inauthentic complaints. Their description of their parent often echoes words of the favored parent despite the child’s claim that the words are their own.”¹³

Experts agree that children suffering from severe parental alienation portray several of the symptoms listed below:

- “Unreasonable, persistent, negative attitudes (anger, hatred, fear, distrust, or anxiety) about a parent who was viewed more favorably in the past. Such attitudes often are freely expressed to the parent and others;
- No apparent guilt for treating the parent with malice, contempt, and utter disrespect; exploits parent by accepting money and gifts without gratitude;
- Explanations for hatred or fear that are trivial, irrational, inadequate, and out of proportion to the rejected parent’s behavior (or false allegations of abuse);
- One-sided views of parents: children describe the alienated parent exclusively or predominantly in negative terms and deny or minimize positive feelings, thoughts, or memories about that parent. By contrast, children describe the other parent as nearly perfect;
- In any conflict between the parents, the children automatically support the favored parent without exercising critical thinking or considering other perspectives. Some children ask to testify against a parent in court;
- Parroting adult language: The children’s expressions echo the alienating parent—often clearly beyond the child’s normal vocabulary and understanding—or concern adult matters such as court motions, evidence, and testimony;

- Preoccupation with favored parent while in the rejected parent’s presence, including frequent and lengthy phone conversations and texting;
- Declaration of independence: The children profess that their rejection of one parent is their own decision and that the other parent had no influence on the alienation;
- Hatred by association: The children denigrate and reject relatives, friends, even pets associated with the rejected parent, despite a previous history of gratifying relations.”¹⁴

III. WHAT PARENTAL ALIENATION IS NOT

A child’s refusal to maintain a relationship with a parent does not always equate to parental alienation. Alienation of a parent by a child without the influence of the favored parent is not parental alienation. Parents who shirk their responsibilities as a parent, cannot blame a child’s rejection of them as a direct result of parental alienation.

When the parent and the child have a history of conflict and there was abuse by the parent against the child, and the child’s rejection of that parent is not parental alienation.

In some cases, a child’s hostility, reluctance to spend time with a parent or even refusal to see the parent can be the result of numerous factors.¹⁵ Psychologist, evaluators, and lawyers must be able to determine the difference between parental alienation and actions of a child which may be simply a normal variant of family structure based on many variables.¹⁶

In *Divorce Poison*, Warshak states that a child is not severely alienated “when the hostility and apparent rejection of a parent:

- “Is temporary and short-lived rather than chronic (not to be confused with intermittent alienation that returns when in the presence of the favored parent)
- Is occasional rather than frequent
- Occurs only in certain situations
- Coexists with genuine expressions of love and affection
- Is directed at both parents.”¹⁷

A child’s preference of one parent may be because the child feels more comfortable with that parent, but still seeks to maintain a relationship with the other parent.¹⁶ In other cases, when the child’s aversion to spending time with one parent which is not based on influence of the other parent, there is no parental alienation.

¹⁰ Warshak, *supra* note 2, at 35.

¹¹ Warshak, *supra* note 8.

¹² WARSHAK, *supra* note 2, at 52.

¹³ WARSHAK, *supra*, note 9.

¹⁴ Warshak, *supra* note 2, at 55-56.

¹⁵ Warshak, *supra* note 2 at 65.

¹⁶ *Id.* at 65-66.

¹⁷ *Id.*

A child who is alienated from a parent because of parental abuse or neglect is not a victim of PAS either, but simply a victim.¹⁸

Often parents are emotionally unstable and may depend on their child to be their conqueror. The child is fearful of leaving the parent alone. The child may protest visiting with the other parent out of concern for the weaker parent. In *Divorce Poison*, Warshak gives an example of a lonely, despondent mother who fell into depression when her husband left her. She remained in bed for days and neglected her children and household responsibilities. She conveyed to her 8-year old daughter that she was helpless when the child left for extended weekends with her father. As a result, the daughter told her father that she did not want to see him on the weekends. According to Warshak, the mother's behavior was not parental alienation but the desperate actions of a sick and depressed person.¹⁹

Another situation which does not constitute alienation is when a child has an aversion to being with one parent because of a step-parent or step-children. Owen, 16, was not emotionally prepared for his parents' split and ultimate divorce. He felt uncomfortable around his new step-mother. He wanted to visit with his father outside of the home to avoid feeling uncomfortable around the new step-mother. This was not considered parental alienation.²⁰

Phillip asked to spend time with his mother during the day, but wanted to sleep at his father's home at night. Because he was not able to articulate the rationale for his request, his mother believed his father poisoned the child against her. Phillip was uncomfortable spending the night at his mother's home because she entertained different men overnight. Phillip's feelings were not the result of parental alienation.

As attorneys, we must carefully analyze and investigate the different components of each complicated case before labeling and pursuing the matter as a parental alienation case.

Parental alienation involves the actions, words, deeds of the favored parent that effect the mental and emotional behavior of the child against the poisoned parent because the child buys into the poisoning. The denial of a child to visit one parent because of the other parent's refusal to allow access may simply be interference with possession and access to the child. Examples of such behavior include, refusal to allow the child to visit because they are sick, busy or too small to stay away from home that long.

IV. EFFECTS OF PARENTAL ALIENATION ON THE FAMILY

To the average person, it may appear inconceivable that a parent would intentionally change a normal loving relationship between a parent and child into one of hatred and total mistrust. Often, parents are so motivated in destroying the ex-spouse that they never consider the impact their actions may have on the children. Warshak found that some parents appear incapable of recognizing that their own thoughts and feelings and the needs of their children were **not** identical.²¹

In *Divorce Poison*, one woman in a fit of anger against her husband stated "We don't want to see you. We don't need you. Why don't you just stay out of our lives".²² The mother was so engrossed in her own pain that she perceived her children's needs to be the same as her own. By blurring the boundaries between the needs and desires of the parent and the child, the favored parent can denigrate and demean the poisoned parent with little concern of the impact it may have on the children.

Another tragic example provided by Warshak was when a father told his children that their mother's refusal to post pone a hearing caused his cancer cells to spread all over his body and as a result the disease would eventually kill him. The father had a type of cancer with a 90% cure rate. The children believed that their father was going to die because of their mother's actions. The children also felt somewhat responsible for the father's impending peril because they knew the hearing was about their custody. According to Warshak, many years later the children were still estranged from their mother.²³

The research on the long-term effects alienation will have on the children and their future families is still in its infancy stages. It does suggest; however, that children who are victims of parental alienation display a higher risk for depression during childhood.²⁴ Warshak also believes that children who hold a parent in contempt risk feeling contempt for the aspects of their personalities that are like their rejected parents.²⁵ Much of the research in child development also indicates that damaged parent-child relationship can cause negative future psychological adjustment of the child as he or she matures.

V. THE ROLE OF THE ATTORNEY IN PARENTAL ALIENATION CASES

Unlike torts or criminal cases where the litigants deal with each other from arm-length distances and the issues are either criminal or civil liability, a divorce only

¹⁸ *Id.*

¹⁹ Warshak, *supra*, note 2, at 72.

²⁰ *Id.*

²¹ Warshak, *supra* note, at page 80.

²² *Id.*

²³ Warshak, *supra* note 2, at page 80.

²⁴ Warshak, *supra* note 1, at 199.

²⁵ *Id.* at 195.

terminates the legal relationship between the divorcing spouses. It does not sever their relationship of parents to their children. It is safe to say that sometimes divorced litigants may not have separated from each other emotionally. The two parents must continue to interact with each other until the children are grown. How this “quasi family unit” exists after the initial litigation is finalized is determined somewhat by what occurred during the divorce proceedings.

In parental alienation cases, attorneys who pursue these cases with a win/lose approach can often exacerbate the problem by encouraging parents to identify fault with the other parent, rather than cooperate for the best interest of the child.

It is the philosophy of The American Academy for Matrimonial Lawyers (AAML) that attorneys in family cases need different ethical rules. Its standard 2.23 states “an attorney for a parent should consider the welfare of the children”²⁶ This may be difficult when your duty is to advocate for your client, and ethically consider the welfare of the child.

VI. REPRESENTING AND COUNSELING THE ALIENATED PARENT

A. Strategies for Assisting the Poisoned Parent

Parents who find themselves victims of parental alienation will experience great emotional turmoil. One day they are this amazing individual, the next day they become “Attila the Hun”. A person who is the target of bad mouthing or brain washing of a child initial reaction is to retaliate with the same. As attorneys, we must counsel our clients not to ignore the criticism but take action. In *Divorce Poison*, Warshak provides a road map of actions parents can implement when the brainwashing begins.

1. “Don’t lose your temper, act too aggressive, or harshly criticize your children.
- Don’t counter-reject your children by telling them that if they don’t want to see you, you don’t want to see them.
 - Don’t passively allow the children and your ex to dictate the terms of your contact with them. Don’t wait patiently until the children feel “the time is right for them to see you.” Alienated parents learn too late that the time is never right.

- Don’t spend your time with the children trying to talk them out of their negative attitudes. Engage in conflict-free, pleasurable interaction instead.
- Don’t dismiss the children’s feelings or tell them that they’re not really angry or afraid of you. Although this may be true, the children may feel that you don’t understand them.
- Don’t accuse the children of merely repeating what the other parent has told them. Again, although this may be true, the children will vehemently deny it and feel attacked by you.
- Don’t bad-mouth your ex.”²⁷

2. When parents separate, it is their duty to try to help foster a continuing relationship between the child and the other parent. This behavior should be continued even during those instances when the other parent is not meeting their parental duty to do so. “The obligation to help children cope with bad-mouthing is not a license to bad-mouth in return.”²⁸

Good co-parenting can lead to a better overall outcome for the children in their growth and development. There is strong evidence “that many parents going through divorce can be taught to improve the quality of their parenting and co-parenting.”²⁹

3. As you can surmise, alienated parents must put forth the extra effort not to resort to the same tactics as the favored parent. Attorney representing the alienated parent should be more patient with their clients than the parent doing the alienating or poisoning. The literature emphasizes the need for attorneys with the poisoned parent to be sympathetic and assist these clients in methods of coping with the situation.³⁰
4. If the attorney believes that the alienating behavior of the favored parent rises to level of abuse, encourage the client to record the conversations between the parent and the child. *Pollock v. Pollock* permits a parent to record the conversation between a parent and the child if the parent believes it is in the best interest of the child to do so.³¹ The recordings can be made via phone, skype, facetime, or any other recording device.

²⁶ *The Bounds of Advocacy: Goals for Family Law Lawyers*, 2000 J. AM. ACAD. MATRIM. LAW. 2 (2000).

²⁷ Warshak, *supra* note 2, at 32-33.

²⁸ *Id.* at 36.

²⁹ Sigal, Irwin Sandler, and Sanford Braver, Do Parents Educational Programs Promote Healthy Post Divorce Parenting? Critical Distinctions and a Review of Evidence, *Fam Ct Rev.*, 120 (2011).

³⁰ Plinio J. Garcia, *Protecting Your Client in Parental Alienation Cases When the Courts Don't*, 2016 FAM. L. MAG., Dec. 29, 2016 at 4 (2016), <http://familylawyermagazine.com/articles/protecting-your-clients-in-parental-alienation-cases-when-the-courts-don%E2%80%99t/>.

³¹ *Pollock v. Pollock*, 154 F. 3d 601 (6th Cir.1998).

Garcia suggests that parents should only resort to recordings if they believe that the alienating parent is threatening the child or “encouraging the child to disrespect the other parent”³²

5. Clients also need to be mindful that texts and emails are permanent written material that can be admitted into evidence. As attorneys, you must encourage your clients to always be polite and respectful when communicating with the alienating parent in written form, regardless of their mental state. Encourage your clients to respond only to emails and texts that pertain to the children. The response should be short and convey information essential to the situation. Garcia cautions that the alienated parents should not respond to unrelated issues, unless the poisoning parent is accusing your client of a crime. In the case of a criminal allegation, the response should be “This is not true”.³³
6. Advise clients to save all emails and screen shot all text messages. If the parties are communicating through Our Family Wizard or a similar program, the communications between the parents will already be saved. The messages should be saved in a manner that will enable the attorney to identify the sender of the message and kept in chronological order. The messages can be admissible evidence of the alienating parents’ disturbing behavior.
7. Encourage your clients to seek assistance from neighbors and friends who will attest to their parenting ability. Individuals who are good parents themselves can be invaluable witnesses.
8. The best defense to a lie is the truth. Alienating parents lie to their children, the courts, their attorneys and anyone else who might listen to them. Attorneys must counsel their clients to be brutally honest to custody evaluator, the courts and most of all their children. Parents should not be afraid to respond to questions posed by their children. Their responses should be age appropriate for the child. Attorneys should assist their clients

in responding to their children’s inquiries in an honest and healthy manner.

B. Organized Programs Designed to Combat Parental Alienation

Once it is determined that parental alienation is a factor in a divorce or custody case, educate your client on the resources available to them.

1. Parent Education Programs

There are a variety of educational programs designed for the prevention and early detection of at-risk children or children susceptible to parental alienation.

A parenting program is one avenue readily available to assist in improving the quality of parenting which leads to a better outcome for the children.³⁴ Parenting programs are mandatory in most cases involving divorce and custody in Harris County, Texas. The effectiveness of these programs has not been fully evaluated; however, satisfaction among parents who take these courses seem quite high with one exception.³⁵ The main complaint among parents is that “the programs failed to prevent a child from aligning with one parent against the other.”³⁶

Bower et al,³⁷ completed a review of parenting programs for divorcing parents. Their analysis revealed that the programs provide little to no guidance on how to respond when “one parent engages in alienating behavior that places the children at risk of joining in the campaign of the denigration and rejection” against the other parent.³⁸ The programs advise the parents to refrain from bad-mouthing the other parent but provide little to no suggestions on how to protect their children from alienating behavior of the other parent. In addition, parents receive no advice on how to respond effectively to their children’s rejection.

2. Education Programs Designed for the Child

Children who are at-risk for becoming alienated from a parent can benefit from programs that will help them to develop the skills to resist the efforts of a poisoning parent.³⁹ *Welcome Back Pluto* is such a program for Coping with Parental Alienation. The video can be viewed by the parent and the child together.

Although the effectiveness of this video in addressing the issues in parental alienation has yet to be

³² Garcia, *supra* note 30.

³³ Garcia, *supra* note 32.

³⁴ Amanda Sigal, Irwin Sandler, Sharlene Wolchik & Sanford Braver, *Do Parent Education Programs Promote Healthy Post Divorce Parenting? Critical Distinctions and a Review of Evidence*, 49 FAM. CT. REV. 120 (2011); Warshak, *supra* note 1, at 201.

³⁵ *Id.*

³⁶ *Id.* Jill R. Bowers, Elissa Thomann Mitchell, Jennifer L. Hardesty & Robert Hughes, Jr., *A Review of Online Divorce Education Programs*, 49 FAM. CT. REV. 776 (2011).

³⁷ *Id.*

³⁸ *Id.*

³⁹ WELCOME BACK, PLUTO: UNDERSTANDING, PREVENTING, AND OVERCOMING PARENTAL ALIENATION (WBP Media 2010), available at <http://www.warshak.com/pluto/index.html>; Warshak, *supra* note 1, at 202.

determined, the comments of the parents who have viewed the video are positive.

1. "Thank you Richard Warshak for this important exposé on one of the most insidious forms of child abuse that is far too common...."⁴⁰
2. "Poignantly accurate. Gently precise in guidance and support for family members who have been made to endure this experience."⁴¹
3. "Your DVD has already helped me immensely – not just to see and articulate my spouse's faults, but also to introspect for my own improvement. You are doing the world a service. The positive feedback indicates that the video helps the parents and the children when addressing this dilemma."⁴²

3. Psychotherapy and Counseling

Suffice it to say that most children suffer from some signs of distress after the separation of their parents. You cannot assume; however, that the difficult behavior of a child is always the result of one parent attempting to poison the child against the other. Warshak points out that the child may be equally difficult in the homes of both parents because of the emotional stress he or she is experiencing because of the demise of the family unit as the child knows it.⁴³

It is significant to note, when a child is being "repeatedly exposed to negative names from one parent, ordered to carry angry messages from one parent to the other, or pressured to devalue one parent over the other, consulting a therapist may be a positive move."⁴⁴

Jean Guez, Ph. D, Houston psychologist believes that there is very little you can do to stop the alienating parent; however, you can teach the child not to buy into it through therapeutic intervention. Warshak agrees with Dr. Guez. He states, "a therapist office can be a safe harbor in which a child can express feelings and learn to maintain love for both parents despite pressure to align with one against the other."⁴⁵

Therapy with the favored parent can help to reduce the parent's poisonous behavior and assist the parent in understanding the need for the child to be sheltered

against harmful messages. The parent can be educated on the impact the poisonous behavior may have on the child.⁴⁶ The therapy with the poisoned parent, can teach the parent effective ways to respond to their children's behavior. The evidence suggests that counseling for children can affirm their right to give and receive love from both parents and help them avoid being in the middle of their parent's disputes. The research also suggests counseling or psychotherapy tends to be suitable and effective in mild and moderate alienated cases.⁴⁷

Conversely, therapy may be ineffective and harmful in cases of moderate to severe alienation. Counselors may be ill-equipped to identify true alienation versus the complaints of a disgruntled child. Inexperienced counselors may be too quick to accept as truthful the representation of events by the favored parent and child.⁴⁸ Warshak discussed a case wherein an inexperienced counselor treated a child for post-traumatic stress disorder when the child was unreasonably alienated from his mother. The child had spent the week with his father and refused to be return to his mother. The mother totally confused, went to the school to talk with the child in the principal's office. The child agreed to this arrangement, but repeatedly stated he needed to talk with his father. The father had worked diligently all week alienating the son from his mother. Subsequently, the child and his father described the event with the mother and the child in the principal's office as traumatic.

The ill-equipped and inexperienced therapist described the meeting with the mother and the child in the principal's office as a traumatic abduction. In this case, the therapist lacked adequate understanding or the knowledge of parental alienation, and made an erroneous diagnosis.⁴⁹

4. Advocating for the Alienated Parent

If you represent a client whose child has been poisoned against him because of parental alienation, there are measures you can take to make the best out of an untenable situation. This road may be difficult but there are measure you can employ to help ease the problem.

⁴⁰ Amazon.com, *Customer Reviews: Welcome Back, Pluto: Understanding, Preventing, and Overcoming Parental Alienation*, http://www.amazon.com/Welcome-Back-Pluto-Understanding-Preventing/product-reviews/B0042QDAQ4/ref=dp_top_cm_cr_acr_txt?ie=UTF8&showViewpoints=1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Warshak, *supra* note 2, at 242.

⁴⁴ *Id.* at 243.

⁴⁵ *Id.*

⁴⁶ Warshak, *supra* note 1, at 203.

⁴⁷ *Id.* at 204; Barbara Jo Fidler & Nicholas Bala, *Children Resisting Post Separation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 FAM. CT. REV. 10, 24 (2010).

⁴⁸ Warshak, *supra* note 1, at 205; Lyn R. Greenberg, Jonathan Gould, Dianna J. Gould-Saltman & Philip M. Stahl, *Is the Child's Therapist Part of the Problem? What Judges, Attorneys, and Mental Health Professionals Need to Know About Court-Related Treatment for Children*, 37 FAM. L.Q 39, 45 (2003).

⁴⁹ *Id.*

1. Tackle the matter with the utmost urgency. Try to get the case before a judge as quickly as possible, and include affidavits with your pleadings specifically stating the critical issues. The devastation to a parent child relationship runs deep and can occur quickly. The nature of the beast allows “these cases to slog through a quicksand of legal maneuvering, repeated bad mouthing of alienating parents, and court orders that fail to be followed without consequences.”⁵⁰
2. Encourage clients to maintain some sort of contact with their children no matter how difficult it is to accomplish. Warshak believes “the absence of regular contact leaves children more vulnerable to seeing the poisoned parent through the eyes of the favored parent.”⁵¹ The failure to maintain contact with the child can be utilized against your client.
3. Knowledge is power. Provide resources to clients which will help them better understand their current situation. There is information available to assist them in addressing the issues rather than exasperating their circumstances. “In effective responses, such as counter-rejecting the children or yelling at them, play into the hands of the alienating parent, reinforce the campaign against your client and make it more difficult for the courts to understand the roots of the problem.”⁵² The children are already being manipulated to preceive the poisoned parent in a bad light. They look for any excuse to justify their hatred: yelling and harsh punishments simply reinforces their justification for rejection of the poisoned parent.
4. If the court appoints an evaluation or therapist, investigate their backgrounds to insure they are familiar with parental alienation issues. Remember, inexperienced counselors can make a bad situation worse.
5. If the child has been treated by a therapist without your client’s knowledge or participation, be very caution of that therapist testimony, and scrutinize any report completed by the therapist. Do an investigation on the therapist to determine their experience in parental alienation. The therapist findings and conclusions are based only on input from the alienating parent and the child.
6. Hire an expert as soon as you identify the issue of possible alienation to educate your client and the court on the characteristic of alienated children.
7. When presenting your case, establish the fact that your client enjoyed a good close, loving relationship with the child, prior to the court proceeding. This can be accomplished through testimonies of individuals who have witness changes in the child’s behavior and attitude toward your client. Neighbors, teachers, and parents of the child’s friends can be great witnesses.
8. Demonstrate to the court that the child’s attitude and behavior toward your client is unreasonable and certainly unjustifiable. Provide pictures and videos as documentary evidence of a strong loving relationship between your client and the child prior to this case.
9. Effectively cross examine expert witnesses who recommendations that do nothing to alleviate the problem but continue to bolster the child’s bad behavior. If the court appoints an expert for custody evaluations, make sure that the order appointing the evaluator specifically delineates the scope of the evaluation and the evaluator’s role in the case. Specific questions regarding each case can be written into the order. If the expert goes further than what was required, request that information be deleted. Our job as attorneys is to ensure that the experts stay within these parameters when testifying.
10. Be aware of common tricks and traps made by evaluators that appear to be neutral. Often the evaluation places undue weight on parenting styles, and errors made by your client as rationale for the child’s attitude. Warshak suggests that you should always investigate “whether your client was able to enjoy a loving relationship with the child in the past despite your client’s alleged flaws”⁵³

VII. REPRESENTING AND COUNSELING THE FAVORED PARENT

A. Strategizing for Assisting the Favored Parent

If you find yourself in the uncomfortable position of representing a client who you suspect is participating in behavior that undermines the child’s relationship with the other parents; there are actions you can take to help alleviate the situation. It may be difficult because the client may not even be aware of their actions, or they may believe their behavior is justified.

⁵⁰ Warshak, *supra* note 1, at 240.

⁵¹ *Id.* at 241.

⁵² Warshak, *supra* note 1, at 243.

⁵³ *Id.*

1. Counsel your client on the benefits a child will receive in having a long-lasting relationship with both parents in their life. Emphasize the damage it can cause to the child in the present and future if the child becomes alienated from one parent. If your client acknowledges they want the child to spend more time with the other parent but cannot force him to go, try questioning them on the tactics they use to make their child complete tasks they would not normally want to do like chores, or homework. Discuss the consequences if the child refuses to complete these tasks and suggest that the client implement the same punishment if the child refuses to visit with the other parent.
2. Complete in depth questioning of your client to ascertain the root or cause of the child's negative behavior against the other parent. It is not parental alienation when the child has a realistic basis for their behavior. A child's adversity against a parent because of neglect or abuse by the parent is not defined as parental alienation.
3. Discuss in detail the possible legal consequences for a parent intentionally poisoning a child against the other parent without a legal basis or firm foundation for doing so.
Often orders require the litigants to complete counseling, or a custody evaluation. In those instances, explore the importance of the client cooperating with the evaluator, such as keeping scheduled appointments and implementing any therapeutic recommendations made by the therapist. You do not want the therapeutic expert to report your client is non-compliant.
4. If you believe you have a client with the propensity to commit parental alienation, encourage them to seek therapeutic help to deal with anger and post-marital relationship issues, direct them to discuss the demise of the relationship with their family and friends outside the presence of the children.
5. Sometimes parent feel alone and rejected when the child is with the new parent. Parents should schedule entertainment for themselves during the time the child is in possession of the other parent. Additional activities will keep your client busy while the child is gone and "reduce temptations for your client to intrude on the child's time with their other parent through excessive communications."⁵⁴

B. Advocating for the Favored Parent

This paper has described parental alienation as badmouthing by a parent against the other parent with the child buying into it, even though there is no basis for the alienation. As previously discussed, the aversion by a child against a parent can also be the direct result of the bad behavior of a parent against the child. Often children become alienated against their parent as a response to dealing with a very hurtful situation: the break-up of the family through the divorce of their parents.

If you represent the parent who is suspected of the alienation, your responsibility to advocate for your client does not stop.

1. Investigate the behavior of the poisoned parent against the child to determine if the child's behavior is justified. If the child's behavior is based on a realistic foundation, educate the court on the poor parenting behavior of the alienated parent.
2. Provide witnesses to testify to the behavior of the poisoned parent which might be the reason for the child's alienation from the parent.
3. If domestic violence occurred in the past that was observed by the child, utilized police reports, doctor records, and arrests reports that can be admitted as evidence of emotional abuse.
4. Try to determine the real root of the alienation and expose it to the court. Warshak suggests that often "rejecting a parent may be a child's misguided way of coping with difficult feelings"⁵⁵

An example of such behavior is described in *Divorce Poisoned* wherein Martha, got divorced from a terrible marriage, and later fell in love with another man who resided in another state. Because of his employment, Martha's new love could not relocate to where Martha lived. Martha married her new-found love and moved to the new state with him and his children. She left her children with their father. Martha loved her children dearly, but she did not want them to be forced to adjust to a new location, new school and, new friends. The son, Jeff, a teenager, began to hate his mother because he felt she picked her new husband and his kids over him. Even though Martha made every effort to see her children on weekends and holidays, Jeff refused to go on the visits and completely rejected his mother. Warshak points out in this situation that there were no villains only "a child struggling with difficult feelings and seeking

⁵⁴ Warshak, *supra* note 1 at 245.

⁵⁵ Warshak, *supra* note 2, at 58.

to address his disappointment by closing his heart.”⁵⁶

5. If the child is over 12 and you believe the alienation is “child driven” requests the court interview the child in chambers regardless of whether there is a custody evaluation completed. You will be quite surprised what a learned judge can determine in a 30-minute conversation with the child.

VIII. ORDERS MATTER

Often parents refuse to allow the child to make a scheduled visit with the other parent by rationalizing the child is sick and unable to make the transition. Unless the child is under doctor’s orders to remain inside, the parent should insist on exercising their possession time with the child.

When parental alienation is an issue, detailed orders can serve as a road map in alleviating or reducing the problems associated with it. Warshak recommends that courts include the following provisions in orders in which the judge believes parental alienation is present:

- “Prohibitions against either parent’s taking the child to see a therapist not mutually agreed upon or appointed by the court
- An exact schedule of contact between the child and each parent that gives the child sufficient time with the alienated parent
- Prohibitions against encroaching on the child’s time with the other parent by arranging special activities that conflict with this time
- Clear procedures for how and where the parent-child contacts will take place
- Neutral transfer sites, such as school, when open hostility between the parents is expected
- Low-conflict methods, such as E-mail and faxes, for the exchange of important information about the children, such as report cards and schedules of athletic games and scout meetings
- Restrictions and regulations on the alienating parent’s contact with the child when the child is with the other parent
- A procedure to change the schedule as needed
- A mechanism through which the court can get information about the progress of treatment and the therapist’s recommendations
- Explicit, specific, and clear penalties for failure to comply with the court’s directives.”⁵⁷

These recommendations are helpful tips in addressing the issues because parents whose objective is to reduce or eliminate a child’s contact with the other parent will utilize “every loophole and ambiguity in a court order to accomplish this goal.”⁵⁸

Although the above suggestions by Warshak are insightful, a detailed and unambiguous order will not be effective against the prevention of parental alienation unless it is enforced by the court who issues it. *In Re Miller*⁵⁹ the New Hampshire Supreme Court vacated the orders of the trial and court of appeals. Both courts recognized the mother had repeatedly violated the order of the court and alienated the child from his father. In spite of her behavior, the courts both agreed that custody should be awarded to the mother. In its reversal, the New Hampshire Supreme Court emphasized the need for the court to enforce its orders.

Multiple unpunished violations of the court’s order make a mockery of the court’s authority to stop the alienation. Many litigants believe that non-compliance of court orders by alienating parents bring no negative consequences. Failure of the court to enforce its own orders empowers the parent to continue the alienation campaign against the poisoned parent. Attorneys should be ready to bring it to the court’s attention when its orders are violated, regardless of whether the violation occurred for failure to allow access to the child, or failure to attend divorce education classes.

Attorneys often wait until there are multiple violations of the order before bringing this issue before the courts. Many attorneys fail to file motions for contempt for a violation in fear of it being perceived as a frivolous motion, simply filed to run up the fees. Judges may punish first time violators with a simple slap on the wrist. Contrary to popular beliefs, the research suggests that the threat of mild punishment imposed consistently and immediately after the violation occurs is more effective than the threat of a harsher punishment that is delayed and uncertain.⁶⁰ Litigants who breach court orders should know with certainty the consequences of their actions. Warshak believes that “swift, certain, uniform and moderate consequences are most likely to be more effective than a delayed punishment in the future.”⁶¹

Warshak recommends that parents who believe that parental alienation is an issue in their cases should 1) secure orders that have teeth in them for non-compliance and 2) move quickly for sanctions when the order is violated.”⁶²

⁵⁶ Warshak, *supra* note 2, at 60.

⁵⁷ WARSHAK, *supra* note 2, at 255-56.

⁵⁸ *Id.*

⁵⁹ *In re Miller*, 20 A.3d at 862.

⁶⁰ Warshak, *supra* note 1 at 210; DAVID M. KENNEDY, DETERRENCE AND CRIME PREVENTION:

RECONSIDERING THE PROSPECT OF SANCTION (2009).

⁶¹ *Id.*

⁶² *Id.*

IX. REMEDIES TO ALLEVIATE PARENTAL ALIENATION

The legislature has granted the courts wide discretion in determining types of conservatorship, and possession and access to a child when using the standard “best interest of the child” as the measuring stick.⁶³ In cases involving parental alienation, there are four options available to the courts in determining what is in the child’s best interest with respect to custody. The court can place the child with:

1. “The favored parent accompanied by court-ordered efforts to remedy the problems,
2. The rejected parent, in some cases temporarily suspending contact with the favored parent,
3. Neither parent, and
4. The favored parent with no scheduled contacts with the rejected parent.”⁶⁴

Attorneys must decide which will be the best option for their client and advocate for that result. Each placement comes with its own array of advantages and disadvantages.

A. Custody to the Favored Parent

If the court continues custody with the favored parent, request the court to require parent education classes, counseling, therapy, or other forms of intervention to assist the child in overcoming his or her own hatred of the rejected parent. Many children who are forced to participate in court-ordered therapy or counseling with the rejected parent do so with great resistance and reluctance. Warshak believes “coercion accompanied court-mandated therapy with sanctions for non-compliance” can provide positive results.⁶⁵ In such cases, the child is more likely to comply with the court’s order if they understand that failure to comply or unsuccessful repair of the damaged relationship may lead to sanctions, or more time by the child with the rejected parent.⁶⁶

The major drawback in allowing the child to remain with the favored parent is the unlimited time the favored parent has with the child to continue his or her hate campaign against the alienated parent. The distorted feelings of the child against the rejected parent may become even more entrenched.

Allowing the child to remain with the favored parent may be less intrusive and requires less adjustment of the child. In severely alienated cases, ordering contact with the rejected parent may only occur during therapy session. This serves for a more structured and controlled

contact. If you are representing the alienated parent demand the child attend regular therapy sessions.

B. Custody to the Rejected Parent

Custody to the rejected parent appears to be most effective in severe alienation cases. A study of 1000 cases completed by the American Bar Association concluded a positive change in 90% of the relationships when contact with the rejected parent and the child increased.⁶⁷

Placement of the child with the rejected parent can be successful in lessening or alleviating the alienation if it is coupled with professional help that assists the family in adjusting to the court order. Warshak recommends that temporarily suspending the child’s contact with the favored parent will further advance the process.⁶⁸ Attorneys advocating for the rejected parent should encourage the court to adopt this option. If the child is only interacting with the rejected parent, he or she can focus on rebuilding a relationship with that parent. “In a sense, the child becomes immersed in a culture that supports their healthy reintegration with the rejected parent.”⁶⁹

Terminating contact with the favored parent until the child repairs the relationship with the rejected parent will provide the child an incentive to invest in the treatment program. The quicker the relationship with the rejected parent is repaired, the sooner the child can resume contact with both parents. Suspending contact with the favored parent also underscores the court’s position on the gravity of the problem “and its conviction” that repairing the relationship with the rejected parent is a requirement the child must achieve.

Placing the child with the rejected parent may require major adjustments for the child. If the parents do not live near each other, the child may have to change schools and make new friends. Sometimes children threaten to hurt themselves, hurt the parent, run away, or violate the court order. Encouragement of such behavior by a favored parent can produce devastating results.

The evidence suggests that a child’s aversion to placement with the alienated parent will intensify if the court pronounces its decision while the child is still in the favored parent’s custody.⁷⁰ If the favored parent has the child before the transfer of the custody occurs, the parent can continue badmouthing against the other parent. The favored parent will encourage the child to stand fast in his or her efforts to violate the court’s decision and continue to articulate threats to hurt him or herself or others. To eliminate this problem, request the

⁶³ TEX. FAM. CODE ANN. §153.002.; Gillespie v. Gillespie, 644 S.W.2d 449, 451 (Tex. 1982).

⁶⁴ Warshak, *supra* note 1, at 211.

⁶⁵ Welcome Back, Pluto, *supra* note 39.

⁶⁶ Warshak, *supra* note 9.

⁶⁷ CLAWAR & RIVLIN, *supra* note 63; Warshak, *supra* note 1, at 218.

⁶⁸ Warshak, *supra* note 1, at 219.

⁶⁹ *Id.* at 219-220.

⁷⁰ Warshak, *supra* note 1, at 222.

court to order the child be in court on the day of the court's decision. The judge can talk with the child and explain it's order. It is most effective if the judge conveys to everyone the consequences in violating the order. The child should be transferred to the rejected parent on that day, at the courthouse.

C. Custody Apart from Both Parents

In some cases, courts have removed the child from both parents and placed him or her with a relative, residential treatment facility, military school, or boarding school.⁷¹ When a court determines that the removal of the child from the care, custody, and control of the favored parent is in the child's best interest and the rejected parent is not currently able to care for the child, this may be a viable option. Courts decide to select this option if the objective is to eventually transition the child to the home of the rejected parent and there are funds to pay for this alternative.⁷² Removal of the child from the source of the tension will also allow them to concentrate on their own mental issues.

This arrangement can become quite expensive. Parents may not have the financial resources to invest in residential treatment or boarding school. This option may also inhibit the child's opportunity to have face-to-face contact with the rejected parent. The efficacy of the type of arrangement in addressing this the needs of the severely alienated child has not yet been determined. The selection of a relative or a facility can serve as a buffer until the child can be transferred to the rejected parent.⁷³

D. Custody to the Favored Parent with no scheduled contact with the Rejected Parent

The last option proposed by Warshak is to acquiesce to the child's wishes and empower the child to make decisions as to the type of relationship he or she chooses to have with the rejected parent. When ordering this option, the court has basically determined that it is not in its power to do anything to improve the relationship between the child and the rejected parent for a variety of reasons, including:

1. "The rejected parent does not have the time to invest in an intervention that may alleviate the problem.
2. The court believes that a child of sufficient maturity can decide as to when and how he or she wants to structure their relationship with their parents.

3. The court believes that it is beyond its authority to force a child to have visitation with the rejected parent.
4. The court believes that greater damage may occur if it forces the relationship.
5. The court concludes that time will eventually alleviate the problem and it wants to relieve the child's suffering."⁷⁴

The drawbacks in selecting this option are many. This arrangement allows a child to choose when and if they will see a rejected parent, and the court is encouraging them to avoid rather than confront and deal with the conflict. Those children who have repeatedly violated the court order are encouraged to believe that they are "entitled to dictate the terms of their relationship with their parents" and may generalize this experience to conclude that the law can be ignored with impunity.⁷⁵ A court that elects this option has given up on the parents and the children. The long term negative effects of parental alienation is devastating to children and their family, and effects their behavior as parents in the future.

X. CONCLUSION

As attorneys, we must investigate any allegation of parental alienation and ethically work toward the alleviation of the problem. There are tools available to assist us in rectifying the problem within and outside the legal system. It is not enough to simply buy into the rationale provided by our clients as the root of the rejection. We must work in harmony with the courts, opposing counsels and the mental health experts to achieve the best outcome for these children.

⁷¹ *Id.*; Elizabeth M. Ellis, *Help for the Alienated Parent*, 33 AM. J. FAM. THERAPY 415 (2005).

⁷² Richard A. Gardner, *Therapeutic Intervention for children with Parental Alienation Syndrome* (2001).

⁷³ *Id.*

⁷⁴ Warshak, *supra* note 1, at 226.

⁷⁵ *Id.* at 227-229.

