



# SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION

By Audrey Beeson, Esq.

## INTRODUCTION

This article will discuss the importance of including the child in divorce and custody mediation, both metaphorically and physically, when appropriate. First, it will take a look at the research and personal experiences of children of separated parents. Second, it will consider the developmental stages of children for the purposes of child-inclusive mediation. Third, it will explore several methods used to include the child at the

mediation table. Fourth, it will discuss the risks and benefits of having the child physically present during mediation. Fifth, it will take a look at one mediator's evolving view over his twenty-years' of experience. Finally, I will discuss

whether I believe that my colleagues, and myself, are doing enough to shine the spotlight on children during divorce and custody mediations.

## CHILDREN — INDEPENDENT VOICES

Research conducted by Anne Graham and Robyn Fitzgerald in 2006, subsequent research by Fitzgerald in 2009, and a consultative forum held by Young People Big Voice resulted in the emergence of five consistent themes when children were asked what participation would mean to them.<sup>i</sup> The first theme identified was respect — children “want to be respected as persons in their own right, that is, as different from their parents and other adults, and having something to offer that should be seriously considered.”<sup>ii</sup> The second theme identified was that the participation by children should be “genuine and focus on change.”<sup>iii</sup> A third theme identified was the idea that participation equals access to information.<sup>iv</sup> The fourth theme identified was the child's differentiation between participating in a decision-making process as opposed to accepting the

### IN THIS ISSUE:

Effective Judicial Interventions to Respond to Parental Alienation Part I  
Page 14

Effective Judicial Interventions to Respond to Parental Alienation Part II  
Page 18

(cont'd on page 3)

**Nevada Family Law Report****Editors:**

Brian Blackham, Las Vegas  
Alexander Morey, Reno

---

**Family Law Section  
Executive Council**

Lauren Berkich, Chair  
Reno  
Brian Blackham, Vice-Chair  
Las Vegas  
Sabrina Dolson, Secretary  
Las Vegas  
Abigail Jaquette, Treasurer  
Reno

Audrey Beeson, Las Vegas  
Melissa Exline, Reno  
Hon. Dixie Grossman, Reno  
Michelle Hauser, Las Vegas  
Hon. Charles Hoskin, Las Vegas  
Bronagh Kelly, Reno  
Megan Lucey, Reno  
Vincent Mayo, Las Vegas  
Carrie Primas, Las Vegas  
Rock Rocheleau, Las Vegas  
Shannon Wilson, Las Vegas  
Shann Winesett, Las Vegas

**Design/Production**

Gretchen Lychuk  
State Bar of Nevada

The *NEVADA FAMILY LAW REPORT* is an electronic publication of the Family Law Section of the State Bar of Nevada.

The *NEVADA FAMILY LAW REPORT* is intended to provide family law-related material and information to the bench and bar with the understanding that neither the State Bar of Nevada, Family Law Section editorial staff nor the authors intend that its content constitutes legal advice. Services of a lawyer should be obtained if assistance is required. Opinions expressed are not necessarily those of the State Bar of Nevada or the editorial staff.

This publication may be cited as Nev. Fam. L. Rep., Vol. 3X, No. X, XXX at \_\_\_\_.

The *NEVADA FAMILY LAW REPORT* is supported by the State Bar of Nevada and its Family Law Section.

# 2024

## STATE BAR OF NEVADA

### FAMILY LAW CONFERENCE

#### September 26 - 28



We are looking forward to seeing everyone at the 2024 Family Law Conference in beautiful South Lake Tahoe! Spend time with colleagues, learn something new to use in your practice, and just relax in the beautiful lake setting.

Register early for savings. For more information about the conference, please visit <https://nvbar.org/for-lawyers/bar-service-opportunities/join-a-section/family-law-section/>.

—The Family Law Executive Council

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 1)

ultimate responsibility for the final decision.<sup>v</sup> The fifth and final theme identified was the idea that the child's participation would be viewed as an integrative process of the whole, as opposed to singling out the participation as "the child's" input.<sup>vi</sup> Children want a "mutual interdependence, recognition and respect" for themselves and their views.<sup>vii</sup>

Cassandra W. Adams is the Assistant Dean of Samford University's Cumberland Public Interest Program and Director of Samford University's Cumberland Community Mediation Center. She wrote an article<sup>viii</sup> that was published in 2011 by the University of Dayton Law Review wherein she shared her personal experiences as a child caught in the middle of her own parents' divorce. When recalling the incident where her parents asked who she wanted to live with, Adams poignantly stated, "I made the choice I was supposed to, but it was not what I wanted."<sup>ix</sup> Even now, over thirty years later, Adams is still affected by that day<sup>x</sup> and believes that an offer to be included in the conversation about her life would have been "monumental."<sup>xi</sup>

Many children of divorce harbor feelings of anger, sometimes even years after their parents' divorce.<sup>xii</sup> Unresolved anger has been shown to result in a higher risk for "high blood pressure, behavioral problems, poor academic achievement, drug use, truancy, bullying, depression, violence, juvenile delinquency, promiscuity, and poor relationships with their parents and other adults."<sup>xiii</sup> Not surprisingly, reasons for children's anger include their sense of "powerlessness and lack of control over many aspects of their lives."<sup>xiv</sup> Children may also complain "about feeling isolated and lonely during the

divorce process, and older children express anger and frustration about being left out."<sup>xv</sup>

Stacey Platt, a clinical professor of law and Associate Director of the ChildLaw Clinic at Loyola University Chicago School of Law, shared her views of the failure to involve children in such important events that substantially affect their lives.<sup>xvi</sup> Ms. Platt states, "excluding children from participation in family dispute resolution is inconsistent with their life experience ....it is unreasonable to support practices that ignore children's regular exposure to family problems and their agency in resolving them ....it is pretense to justify children's exclusion from family separation cases in furtherance of their protection from conflict that they already know about and live through on a daily basis at home ....excluding children from family separation conflict resolution disempowers them, taking away from them a participatory role they once had."<sup>xvii</sup>

This information leads to the inevitable conversation about children's rights. The UN Convention on the Rights of the Child is a treaty that protects a child's civil, political, economic, social and cultural rights.<sup>xviii</sup> The United States signed the treaty on February 16, 1995; however, it has yet to ratify the same.<sup>xix</sup> Several articles of the convention deal with the relationship between a child and his or her parents:<sup>xx</sup> Article 8, the right to know parents; Article 9, protection from physical separation from parents; Article 10, respect for right to maintain contact with parents; Article 11, recognition that children may be separated from parents by action of State Party; and Article 12, right of child to express views freely.<sup>xxi</sup> It is Article 12 that is relevant to this

*(cont'd on page 4)*

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 3)

article. Article 12 gives a child the right to express their views in legal proceedings which affect him or her.<sup>xxii</sup> Child advocates look to this convention for the context in which children's voices should be heard.<sup>xxiii</sup> Views of children are to be considered, but they are not to be used as the ultimate decision.<sup>xxiv</sup>

There is a "strong relationship between a child's perception of the fairness of the parenting arrangements and the extent to which they were allowed to participate."<sup>xxv</sup> Child-inclusive mediation provides children with a sense of empowerment and helps their understanding of what is happening in their lives by giving them information.<sup>xxvi</sup>

### DEVELOPMENTAL CONSIDERATIONS FOR CHILD-INCLUSIVE MEDIATION

A consideration for every mediator contemplating the inclusion of a child in mediation is the particular developmental stage that a child is in at that time. Developmental considerations are typically categorized by the age range of children.<sup>xxvii</sup> There are five categories of developmental stages: (1) Toddler-preschool aged child, eighteen months to five years; (2) Early elementary school-aged child, five to seven years; (3) Older elementary school-aged child, eight to ten years; (4) Middle school-aged child, eleven to thirteen years; and (5) Adolescent or high school-aged child, fourteen to eighteen years.<sup>xxviii</sup> Each category should be considered for the appropriateness of child-inclusive mediation.

Toddler-preschool aged children are unsuitable candidates due to the sensitivity of changes in their

routine.<sup>xxix</sup> Further, they have "limited language and inability to understand what divorce is."<sup>xxx</sup> Early elementary school-aged children tend to blame themselves for their parents' separation, see things as black and white, and are "susceptible to manipulation and experience loyalty conflicts."<sup>xxxi</sup> These children can, however, benefit from participation.<sup>xxxii</sup> Older elementary school-aged children also tend to blame themselves, but have the capacity for empathy, thereby tending to channel the feelings of their parents.<sup>xxxiii</sup> They tend to worry a lot and acknowledge "feelings of insecurity relative to finances, food, clothing, safety and overall well-being."<sup>xxxiv</sup> Because these children have the ability to understand the process and can verbalize their concerns, they are considered perfect candidates for participation in the process.<sup>xxxv</sup> Middle school-aged children tend to be ashamed that their parents are divorcing, tend to place blame on one parent more than



(cont'd on page 5)

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 4)

the other, and are hesitant to allow their fears and concerns to show.<sup>xxxvi</sup> “These children can participate fully in the mediation process and with proper guidance, assistance and support, they can learn communication skills to assist handling their relationship with their parents.”<sup>xxxvii</sup> Adolescent or high school-aged children may feel abandoned by their parents, can gain an understanding of the complicated reasoning of divorce without placing blame on a parent, but tend to take on the role of care-taker for younger siblings.<sup>xxxviii</sup> They can also fully participate in the mediation process.<sup>xxxix</sup>

These are merely guidelines and there will always be exceptions to these generalizations. Parents should weigh in on whether or not they believe that their child or children fall into the developmental stage or whether they are unique. Some older children may be too emotional to participate and may actually blame one parent more than another, while some younger children may be very mature for their age and show the capacity for understanding more than their peers.

### METHODS OF CHILD-INCLUSIVE MEDIATION

When practitioners hear “child-inclusive mediation,” most jump to the conclusion that the child would be present at the mediation table, making decisions along with their parents. This is an incorrect assumption. Child-inclusive mediation includes a wide spectrum of options ranging from the simple idea of keeping the focus of the child at the forefront of the parents’ minds during the mediation process to the other end of the spectrum which includes direct participation by the child. “Including children in divorce mediation may help children deal with their anger by signaling that

their feelings matter,” and thereby results in a positive impact on their mental wellbeing.<sup>xl</sup> The most appropriate way to determine the level of child inclusion is to assess the readiness of the parents to hear what their children have to say as well as their ability to consider the same during the mediation process.

### “Parent Readiness” Model

A current method for this assessment is being tested by the countries of Australia and Canada by mediators who are conducting interviews of each parent and rating them on a “Parent Readiness Scale.”<sup>xli</sup> The Parent Readiness Scale is a nine item 5-point scale which assesses the following areas: (1) parent differentiation from child; (2) parent insight; (3) parent sensitivity; (4) level of disengagement; (5) value of role of other parent; (6) problem-solving ability; (7) parent ability to self-regulate; parent ability to take a neutral stance regarding the other parent; and (9) ability to place child’s needs over parent needs.<sup>xlii, xliii</sup> Depending on the result of the assessment, the mediator will then determine what level of child inclusion is appropriate at that time.<sup>xliv</sup> For those parents who test on the low end of the scale, indirect involvement of the child is most appropriate.<sup>xlv</sup> For parents who test in the middle of the scale, some form of direct child involvement is appropriate.<sup>xlvi</sup> Finally, for the parents who test on the high end of the scale, direct child involvement is appropriate.<sup>xlvii</sup>

### Different Levels of Involvement

**Indirect Involvement:** There are numerous different ways to indirectly involve the child in mediation sessions with the parents. Meetings can be structured wherein

*(cont'd on page 6)*

**SHINING THE SPOTLIGHT ON CHILDREN DURING  
DIVORCE AND CUSTODY MEDIATION  
(CONT'D FROM PAGE 5)**



discussions focus on the well-being of the child as well as any urgent concerns either parent may have.<sup>xlviii</sup> The Child and Youth Concerns Scale, which is intended to “summarize a child’s life experiences and views, and identify particular areas of concern for a child,” may be utilized by the mediator to engage the parents in productive discussions pertaining to their child.<sup>xlix</sup> The mediator may guide the discussions around the best interests of the child by obtaining the parents’ commitment to mediate with that goal in mind.<sup>l</sup> Parents may be given information pertaining to the basic principles of family law in their state and child development stages.<sup>li</sup> The mediator may guide the discussion to focus on the specific needs of the particular children at issue.<sup>lii</sup> Finally, the mediator may work with the parents to create a family genogram, “which externalizes the conflicted relationship from the individual parents” and invites them to discuss how they can work towards a “parental alliance” that will help them co-parent moving forward.<sup>liii</sup>

while offering the specialist’s expertise in child development and related areas.<sup>lvi</sup> Parents can include children at the conclusion of a successful mediation, acting as a united front, to inform the children of the parents’ final agreement and in order to answer any questions that the children may have.<sup>lvii</sup> Children could provide their parents and the mediator with lists, delineating such opinions as the positives and negatives of living with each parent, or describing the activities that they enjoy doing with each parent.<sup>lviii</sup> Perhaps the list leads the parents to realize that one parent is more patient during homework, or better at time-management with the children’s schedule.

**Direct Involvement:** When parents are ready to hear what their child has to say and to consider the same during the mediation process, then the child has direct involvement in the process. This can include attendance at a mediation session wherein the child is a silent observer, a separate meeting between the child and the

**More Direct Involvement:** Parents may be ready to hear what their child has to say, but only if filtered through a specialist.<sup>liv</sup> A specialist can meet with the child outside of the presence of the parents and then participate in the process by relaying the child’s “thoughts, needs and concerns” when appropriate.<sup>lv</sup> The specialist can offer direct information from the children

*(cont'd on page 7)*

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 6)

mediator, participation in family sessions with both parents and the mediator, or separate sessions between the child, one parent, and the mediator. During direct involvement, “parents are supposed to reinforce the child’s courage by providing positive feedback to their child for their input.”<sup>lix</sup> One alternative method is to involve the child only when there is a particular dispute between the parents and the child’s voice should be heard in order to help the parents make the best choice for the child.<sup>lx</sup>

### Empowerment Model

Creation of the empowerment model was first motivated by the desire of mediators to have a technique they could use in order to help families in conflict.<sup>lxi</sup> The “premise behind the model lies in the belief that children are empowered and benefit most when they are provided information that will assist them in understanding their current situation and that of their parents as well as the future plans that will affect them. Children, like parents, have a fundamental interest in protecting family relationships.”<sup>lxii</sup>

The empowerment model<sup>lxiii</sup> was designed with this premise in mind. Specifically, the model provides a mechanism by which the mediator determines, to the degree possible, what a parent will do and say before an interview of the child takes place.<sup>lxiv</sup> Parents are taught to continually reassure the children of their “commitment to exert efforts toward cooperation and coordination” as well as “continued love, support, acknowledgment, validation, and permission for the child to demonstrate love and affection to the other parent.”<sup>lxv</sup> The

information obtained from the child interview can aid parents in creating “much more informed, child-sensitive, and child-focused decisions that are also embraced by the children.”<sup>lxvi</sup> If the empowerment model is determined to be inappropriate for a particular case, the mediator can still interview the child merely for the purpose of providing information to the child that may help the child cope with the separation of his or her parents.<sup>lxvii</sup> The information may include the following topics: (1) boundaries; (2) an explanation of how the legal system works; (3) clarifying the roles and responsibilities; and (4) who has authority over the final decisions.<sup>lxviii</sup>

The fundamental ideologies underlying the empowerment model include: (1) an assertive, active and interactive facilitation approach by the mediator; (2) a continuum of impartiality that includes a positive approach to the process itself; (3) an assessment of all participants in order to determine the appropriateness of the model; (4) an assessment of the child’s developmental needs; (5) effective use of time; (6) securing the child’s safety during the mediation, both physically and emotionally; (7) an assessment of the parents’ self-expression and communication between the parents and child; (8) acknowledgment and validation of each participant; (9) providing conditions that promote collaboration and a focus on problem-solving; and (10) creation of a method that can enhance the voice of the child as well as providing the child with information that can give the child a sense of predictability for their future while they transition from a two-parent home to separate homes.<sup>lxix</sup>

*(cont'd on page 8)*

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 7)

### DOWNSIDERS AND BENEFITS OF PHYSICALLY INCLUDING THE CHILD DURING MEDIATION

Some of the downsides of child-inclusive mediation include the potential cost for the parents, especially when a separate child specialist is involved.<sup>lxx</sup> Parents can anticipate that even without another professional, the added involvement of the child will increase the number of sessions with the mediator, and therefore the total cost of mediation.<sup>lxxi</sup> Additional sessions could result in additional missed time from work as well.<sup>lxxii</sup> Some children may experience the same type of anxiety and conflict in child-inclusive mediation as they would when interviewed by a judge.<sup>lxxiii</sup>

Potential benefits of having children physically included during some point in the mediation process include giving the child a voice — being able to be heard.<sup>lxxiv</sup> The context of the child participation is in a less intimidating manner than the child being involved by the court, such as a one-on-one interview with a judge.<sup>lxxv</sup> Child inclusion gives parents the prospect of focusing on their child's needs and wishes instead of their own.<sup>lxxvi</sup> Children who have the opportunity to be involved may benefit from having the ability to express their feelings, opinions, concerns and desires, which “may help relieve their anxieties and improve their ability to cope with the intense ambiguity of their living situation.”<sup>lxxvii</sup> Successful mediations result in time and cost-savings for the family, thereby allowing the parents to focus their time and money on the child instead of the dispute.<sup>lxxviii</sup> “Even in cases that do not settle, children benefit from the child-inclusive mediation process, knowing that their parents cared about how they felt and tried to settle matters

peacefully.”<sup>lxxix</sup> Post-mediation litigation is less likely when children are involved.<sup>lxxx</sup> Children are less likely to have conflict with their parents and are less likely to feel caught in the middle between their parents.<sup>lxxxi</sup> Finally, parents have the opportunity to provide an example to their children of “positive and constructive” dispute resolution behavior.<sup>lxxxii</sup>

### IT'S NOT AS EASY AS IT SOUNDS

Robert E. Emery is a Professor of Psychology and Director of the Center for Children, Families, and the Law at the University of Virginia. Mr. Emery wrote an essay in 2003 discussing the changes in his process as a mediator over time.<sup>lxxxiii</sup> Mr. Emery began providing divorce mediation more than twenty years prior to writing his essay.<sup>lxxxiv</sup> At the beginning of his family mediation career, Mr. Emery made it a habit to include children in the mediation process, with the desire of hearing what they had to say, and to make sure that the parents also heard what their children had to say.<sup>lxxxv</sup> Mr. Emery did this because he believed that “children deserved to be heard” and because he “truly wanted to promote children's best interests.”<sup>lxxxvi</sup> Mr. Emery believed that he was acting in the best interests of the children<sup>lxxxvii</sup> and, more than likely, in the best interests of the parents as well.

Surprisingly, after less than a dozen mediations conducted in this manner, Mr. Emery began to exclude children from the mediations, citing once again that he believed he was acting in the children's best interests.<sup>lxxxviii</sup> He came to the conclusion that he ended up “putting children in a position that was in direct opposition to

*(cont'd on page 9)*



## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 8)

their best interests: smack in the middle between their warring parents.”<sup>lxxxix</sup> It was his experience that instead of learning a child’s preference with regard to custody or visitation, he instead learned that the majority of the children simply wanted “their parents to stop fighting, [wanted] their parents to just get along, [and] that their parents would stop putting them in the middle.”<sup>xc</sup> In one specific incident that Mr. Emery recalls there was a child, whose voice was summoned by his mother, that did not feel empowered, but instead felt burdened and trapped between his parents.<sup>xcii</sup> “He did not want a voice in [the] decisions. He wanted his parents to decide — and to decide fairly without involving him in their arguments. [H]e wanted his parents to act like parents, so that he could just be a kid.”<sup>xcii</sup>

Mr. Emery now believes that while children’s voices should be taken into consideration by parents, it is ultimately the parents’ job to make a custody determination.<sup>xciii</sup> His concern is that by involving the children in the dispute, there is a risk of “turning the children into substitute parents.”<sup>xciv</sup>

Mr. Emery is self-aware in that he recognizes that there are exceptions to his experience and belief that children feel burdened instead of empowered, acknowledging that in relaying the incident he is in fact acknowledging that it was the child and his voice that turned that particular case around.<sup>xcv</sup> Mr. Emery still wants to give children a voice, but he prefers that those children be older and that they already have a strong preference which they want to share.<sup>xcvi</sup>



## ARE MEDIATORS DOING ENOUGH TO SHINE THE SPOTLIGHT ON THE CHILD — ONE ATTORNEY’S OPINION

One of the most ingrained concepts in family law attorneys in my city is that children are to be shielded as much as possible from litigation. In fact, we even have a rule that prohibits lawyers and litigants from “discussing issues, proceedings, pleadings, or papers on file with the court with any minor child.”<sup>xcvii</sup> Therefore, we are programmed to exclude the child from family law matters. Due to the fact that this rule is imprinted on our brains, most practitioners will not take a step back in order to view whether mediation should have a different atmosphere. We have all learned, at one point in our practice, that children are sometimes used as pawns, that children suffer from the conflict between their parents, that many children (at least according to our clients, their parents) want to be able to tell someone who they want to live with, and that most judges give little deference to a child’s wishes

absent extraordinary circumstances under the presumption that joint custody is best according to our legislature. It seems the more our legislature sees fit to define what is best for children, the more distant the end result is from what is actually best for the majority of children. Parents are so concerned with titles — primary physical custody versus joint physical custody — and so concerned about what that title will mean for a child support obligation, that they will do anything that they can to fit themselves in the appropriate box. They of course try to convince themselves, and their attorneys,

*(cont'd on page 10)*

**SHINING THE SPOTLIGHT ON CHILDREN DURING  
DIVORCE AND CUSTODY MEDIATION  
(CONT'D FROM PAGE 9)**

that it really is what is best for their children anyway. After all, how can the legislature be wrong?

What we have created is a one-size-fits-all mentality with regard to what our children need. But it's not realistic — instead it is our definition of what we believe children need. How can we be so egotistical to believe that we know what every child needs? We've never once stopped and asked this particular child, in this family, with these dynamics what he or she needs. Most practitioners and mediators like to think that by asking the parent about their children, the practitioner or mediator is indirectly looking out for the children. Maybe it's enough in certain situations, but more than likely it is not enough the majority of the time.

We need to determine how mediators can reprogram their thought patterns to a child-focused approach in divorce and custody mediations. Maybe we tell each parent to write a few paragraphs about their child or children prior to the first mediation session. Each parent can then read aloud their description of the child to the mediator in the other parent's presence. Maybe we begin the mediation process with a brainstorming session where parents focus on the needs and activities of each child and the result stays on a whiteboard throughout the process. When parents start to depart from the topics, the board is there to bring them back to the reason that they are in mediation. Maybe, as in our classroom exercises, we create a joint mission statement for these parents about what they hope to accomplish with their parenting agreement. I have no doubt that mediators could benefit from learning skills and techniques necessary to guide parents away from what

the parent needs or wants back to what their children need or want, and how best to accomplish that for their children.

This inevitably leads to the question of how to incorporate all of this into mediation sessions when the parents cannot afford multiple mediation sessions, or when the parents are participating in settlement conferences as opposed to mediation. Many mediators do not distinguish between a settlement conference versus a mediation. That's not to say that each doesn't have its own benefits, but mediators who hold settlement conferences are more focused on getting straight to the issues, resolving those issues, and getting a deal done. They often weigh in with their experience with what your judge will or will not do. They also often weigh in with what they have experienced during their years of practice. The atmosphere of a settlement conference is "let's get this done." Mediation, on the other hand, is a more complex process. Mediation is used to try and help the two parents learn how to communicate with one another in order to resolve their dispute. Mediation focuses more on the participants and how to get them to a successful result so that they can use what they learn in mediation to resolve future disputes. When children are involved, our goal should be to lead parents to mediation rather than to a settlement conference. Children should never be the casualty from a settlement conference.

In order to guide more parents into mediation than into settlement conferences, we need to start with access to information. Parents need to be informed of the benefits and downfalls of each type of alternative dispute resolution option. For parents who have no problem

*(cont'd on page 11)*

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 10)

with agreeing to custody and visitation, but might be hung up on how to handle certain holidays, those parents can look to the quicker process of a settlement conference. Parents need to understand that in many cases a quick and less expensive settlement conference will only serve as a temporary bandage, but will not resolve the underlying issues. The underlying issues can result in post-divorce litigation that is more costly, stressful, and time-consuming than to participate in a mediation process from the start. Parents need to understand that the mediation process is more about their child, their child's needs, and how to transition the parents from one parenting unit to co-parents. Information about how high conflict affects children should be given to parents along with the developmental needs of children in different age ranges so that the parents have a more complete understanding of just how important it is for the parents to resolve their issues with as little impact on the children as possible.

### CONCLUSION

The main idea of this article was to explore child participation in mediation. While there isn't a perfect answer or scenario, there are many options that should be explored by mediators and parents before they dive into litigation and their family conflict. Every case is different, and so is every family. My proposal is that mediators learn new options so that they have a larger range of skills that they can adapt on a case-by-case basis. Mediators should no longer shy away from the idea of including children in mediation — they simply need to expand their definition of what it means to include the child.

Audrey J. Beeson is the Owner of Audrey Beeson Esq. PLLC and is Of Counsel with The Law Office of Frank J. Toti. She graduated from the William S. Boyd School of Law, UNLV, in May 2007 and received her license to practice law in October 2007. She became a Board Certified Family Law Specialist in 2015. She obtained her LL.M in ADR from Straus Institute for Dispute Resolution, Pepperdine School of Law in May 2018. Beeson served as Chair for the State Bar of Nevada ADR Section from June 2021 – June 2023. Beeson practices primarily in the areas of family law and mediation and currently appears in Juvenile Dependency court. She is also a Special Education Hearing Officer for the Nevada Department of Education, a member of the Family Law Section Executive Council, a mediator for the Nevada Juvenile Dependency Mediation Program and a "Transitioning into Practice" mentor for the State Bar of Nevada. Beeson's pro bono work includes serving as a Truancy Diversion Judge for five years, acting as a Pro Bono CAP attorney and as a Pro Bono Guardian Ad Litem. Beeson is published in the Pepperdine Dispute Resolution Journal.

### ENDNOTES

<sup>i</sup>Anne Graham and Robyn Fitzgerald, Progressing children's participation: Exploring the potential of a dialogical turn, *Sage Journals, Childhood*, 17(3) 343-359 (2010).

<sup>ii</sup>Id at 346.

<sup>iii</sup>Id.

<sup>iv</sup>Id at 347.

<sup>v</sup>Id.

<sup>vi</sup>Id.

<sup>vii</sup>Id.

<sup>viii</sup>Children's Interest – Lost in Translation: Making the Case for Involving Children in Mediation of Child Custody Cases, 36 *U. Dayton L. Rev.* 353 (Spring 2011).

<sup>ix</sup>Id at 354.

<sup>x</sup>Now that I am an adult, educated, married, and a parent of two, I reflect and wonder whether my personal experience would have been different had there been someone else in the picture to ask me the question. Would I have had the courage to express my concerns and desires to a third-party? Would my relationship with my parents have evolved differently? Would I have been free from thinking every time my father told me 'no,' that it wasn't because I

(cont'd on page 12)

## SHINING THE SPOTLIGHT ON CHILDREN DURING DIVORCE AND CUSTODY MEDIATION (CONT'D FROM PAGE 11)

rejected him in the Laundromat, but because there was sound parental rationale for the ‘no’ answer?” Id.

<sup>xi</sup>Id.

<sup>xii</sup>Solangel Maldonado, Taking Account of Children’s Emotions: Anger and Forgiveness in “Renegotiated Families,” 16 Va. J. Soc. Pol’y & L. 443, 446 (Winter 2009).

<sup>xiii</sup>Id. at 445.

<sup>xiv</sup>Id. at 448.

<sup>xv</sup>Melissa J. Schoffer, Bringing Children to the Mediation Table: Defining a Child’s Best Interest in Divorce Mediation, 43 Fam. Ct. Rev. 323, 327 (April, 2005) citing to Joan B. Kelly, Psychological and Legal Interventions for Parents and Children in Custody Cases and Access Disputes: Current Research and Practice, 10 VA. J. Soc. Pol’y & L. 129, 149 (2002).

<sup>xvi</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 763-764 (Spring 2016).

<sup>xvii</sup>Id.

<sup>xviii</sup>Kurtis A. Kemper, J.D., Construction and Application of the United Nations Convention on the Rights of the Child, 28 I.L.M. 1448 (1989), 20 A.L.R. Fed 2d 95, §2, pg. 7/40 (2007).

<sup>xix</sup>[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en)

<sup>xx</sup>Kurtis A. Kemper, J.D., Construction and Application of the United Nations Convention on the Rights of the Child, 28 I.L.M. 1448 (1989), 20 A.L.R. Fed 2d 95, §2, pg. 7/40 (2007).

<sup>xxi</sup>Id. at §§ 8-12, pages 12-13/40.

<sup>xxii</sup>Id. at §12, page 13/40.

<sup>xxiii</sup>Milfred D. Dale, Don’t Forget the Children: Court Protection from Parental Conflicts is in the Best Interests of Children, 52 Fam. Ct. Rev. 648, 649 (October, 2014).

<sup>xxiv</sup>Id.

<sup>xxv</sup>Id.

<sup>xxvi</sup>Ernest A. Sanchez and Sherrie Kibler-Sanchez, Empowering Children in Mediation, 42 Fam. Ct. Rev. 554, 556 (July, 2004).

<sup>xxvii</sup>Cassandra W. Adams, Children’s Interest – Lost in Translation: Making the Case for Involving Children in Mediation of Child Custody Cases, 36 U. Dayton L. Rev. 353, 357 (Spring 2011).

<sup>xxviii</sup>Id.

<sup>xxix</sup>Id.

<sup>xxx</sup>Id.

<sup>xxxi</sup>Id.

<sup>xxxii</sup>Id.

<sup>xxxiii</sup>Id.

<sup>xxxiv</sup>Id.

<sup>xxxv</sup>Id.

<sup>xxxvi</sup>Id.

<sup>xxxvii</sup>Id. at 357-358.

<sup>xxxviii</sup>Id. at 358.

<sup>xxxix</sup>Id.

<sup>xl</sup>Solangel Maldonado, Taking Account of Children’s Emotions: Anger and Forgiveness in “Renegotiated Families,” 16 Va. J. Soc. Pol’y & L. 443, 457 (Winter 2009).

<sup>xli</sup>Lorri A. Yasenik and Jon M. Graham, The Continuum of Including Children in ADR Processes: A Child-Centered Continuum Model, 54 Fam. Ct. Rev. 186, 189, 199 (April, 2016).

<sup>xlii</sup>Parent differentiation from child is the level of emotional/psychological involvement or over-involvement; parent insight is the ability to examine one’s own conscious thoughts and feelings; parent sensitivity is the ability to attune to the child’s signals, interpret them correctly and satisfy them promptly; level of disengagement is the ability of each party to focus on the parenting role versus the historical couple relationship; value of role of other parent is the degree to which the parent treats the other parent’s role as significant and important; problem solving ability is the parent ability to address day-to-day parenting issues; parent ability to self-regulate is the parent’s ability to initiate, inhibit or modulate his/her emotional state of behavior in a given situation; parent ability to take a neutral stance regarding other parent is the degree to which one parent uses supportive referencing towards the other parent; and ability to place child’s needs over parent needs is the degree to which a parent can actively identify and appropriately meet their child’s needs. Id at 199-200.

<sup>xliiii</sup>Id at 189, 199-200.

<sup>xliv</sup>Id at 200.

<sup>xlv</sup>Id.

<sup>xlvi</sup>Id.

<sup>xlvii</sup>Id.

<sup>xlviii</sup>Id. at 189.

<sup>xlix</sup>Id. at 191.

<sup>l</sup>Id.

<sup>li</sup>Id. at 192.

<sup>lii</sup>Id.

<sup>liiii</sup>Id.

(cont’d on page 13)

**SHINING THE SPOTLIGHT ON CHILDREN DURING  
DIVORCE AND CUSTODY MEDIATION  
(CONT'D FROM PAGE 12)**

- <sup>liv</sup>Id.
- <sup>lv</sup>Id.
- <sup>lvi</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 760 (Spring 2016).
- <sup>lvii</sup>Melissa J. Schoffer, Bringing Children to the Mediation Table: Defining a Child's Best Interest in Divorce Mediation, 43 Fam. Ct. Rev. 323, 329 (April, 2005).
- <sup>lviii</sup>Jessica J. Sauer, Couples: Structuring Mediation to Accommodate the Needs & Desires of Litigious Parents, 7. Pepp. Disp. Resol. L.J. 501, 532 (2007).
- <sup>lix</sup>Lorri A. Yasenik and Jon M. Graham, The Continuum of Including Children in ADR Processes: A Child-Centered Continuum Model, 54 Fam. Ct. Rev. 186, 189, 193 (April, 2016).
- <sup>lx</sup>Melissa J. Schoffer, Bringing Children to the Mediation Table: Defining a Child's Best Interest in Divorce Mediation, 43 Fam. Ct. Rev. 323, 329 (April, 2005).
- <sup>lxi</sup>Ernest A. Sanchez and Sherrie Kibler-Sanchez, Empowering Children in Mediation, 42 Fam. Ct. Rev. 554, 555 (July, 2004).
- <sup>lxii</sup>Id. at 555-556.
- <sup>lxiii</sup>"The model is designed for intervention with school-aged children aged 7 to 17." Id. at 556.
- <sup>lxiv</sup>Id. at 555.
- <sup>lxv</sup>Id. at 556.
- <sup>lxvi</sup>Id. at 559.
- <sup>lxvii</sup>Id.
- <sup>lxviii</sup>Id.
- <sup>lxix</sup>Id. at 556.
- <sup>lxx</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 761 (Spring 2016).
- <sup>lxxi</sup>Id.
- <sup>lxxii</sup>Id.
- <sup>lxxiii</sup>Melissa J. Schoffer, Bringing Children to the Mediation Table: Defining a Child's Best Interest in Divorce Mediation, 43 Fam. Ct. Rev. 323, 328 (April, 2005).
- <sup>lxxiv</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 761 (Spring 2016).
- <sup>lxxv</sup>Id.
- <sup>lxxvi</sup>Id.
- <sup>lxxvii</sup>Jessica J. Sauer, Couples: Structuring Mediation to Accommodate the Needs & Desires of Litigious Parents, 7. Pepp. Disp. Resol. L.J. 501, 533 (2007).
- <sup>lxxviii</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 761 (Spring 2016).
- <sup>lxxix</sup>Id.
- <sup>lxxx</sup>Robin H. Ballard, Amy Holtzworth-Munroe, Amy G. Applegate, Brian M. D'Onofrio, John E. Bates, A Randomized Controlled Trial of Child-Informed Mediation, 19 Psychol. Pub. Pol'y & L. 271, 272 (August, 2013).
- <sup>lxxxi</sup>Id.
- <sup>lxxxii</sup>Stacey Platt, Set Another Place at the Table: Child Participation in Family Separation Cases, 17 Cardozo J. Conflict Resol. 749, 761 (Spring 2016).
- <sup>lxxxiii</sup>Robert E. Emery, Children's Voices: Listening – And Deciding – Is an Adult Responsibility, 45 Ariz. L. Rev. 621 (Fall 2003).
- <sup>lxxxiv</sup>Id. at 623.
- <sup>lxxxv</sup>Id.
- <sup>lxxxvi</sup>Id.
- <sup>lxxxvii</sup>Id.
- <sup>lxxxviii</sup>Id.
- <sup>lxxxix</sup>Id.
- <sup>l</sup>Id.
- <sup>lci</sup>Id. at 625.
- <sup>lcii</sup>Id.
- <sup>lciii</sup>Id. at 627
- <sup>lciv</sup>Id.
- <sup>lcv</sup>Id. at 625.
- <sup>lcvi</sup>Id. at 626.
- <sup>lcvii</sup>Supreme Court of Nevada, Rules of Practice for the Eighth Judicial District Court, Rule 5.301, formerly known as Rule 5.03.



# EFFECTIVE JUDICIAL INTERVENTIONS TO RESPOND TO PARENTAL ALIENATION PART I: UNDERSTANDING PARENTAL ALIENATION

By Judge Margaret Pickard, Stephanie Holland, Psy.D.,  
and Lipika W. Jain, Psy.D.

Part I of this article, published in 2021, has been reprinted here for continuity. Part II follows this article and discusses effective judicial interventions to respond to parental alienation.

Parental alienation, by any name, is one of the most painful and heartbreaking experiences that a parent can go through. Parental alienation occurs when one parent psychologically manipulates a child to reject the other parent with whom the child once had a supportive and loving relationship, by characterizing the targeted parent as dangerous, inadequate, or inappropriate. The alienating parent is unwilling or unable to focus on the needs of the child and effectively uses the child as a weapon in the parents' perennial domestic feud. While various methods have been proposed to target parental alienation (i.e., parent coordination and intensive reunification therapy, among others), judicial intervention is generally the most effective and long-lasting way to disrupt parental alienation.

Part I of this article will address what parental alienation is and how to identify it. Part II will provide effective strategies that can be used by attorneys and judges to interrupt the cycle of parental alienation and reduce the frequency that these families return to court.

## Understanding Alienation

While some professionals re-brand parental alienation as pathogenic parenting or parent/child refusal, the result is essentially the same: *a child openly and consistently expresses anger, hatred, or fear towards the "targeted parent," which is unreasonable and contrary to the child's actual experiences with that parent.* Parental alienation is different than a child who

is estranged from a parent who has a history of violence (including abuse or neglect) or a child who is aligned with a parent who the child prefers spending time with, while also maintaining a relationship with the other parent. Parental alienation occurs when one parent regularly denigrates, lies, and/or systematically excludes the other parent from a child's life, all while portraying him or herself as the victim of the targeted parent.

The ability of parents to harness their emotions and protect children from their conflicts is based on their own emotional maturity. While most parents understand that their role as adults is to protect their children, both physically and emotionally, some parents become blinded by their hatred of the other parent and the children become the spoils of the parents' domestic battles.

It is not difficult to identify an alienated child. While there are degrees of alienation, an alienated child typically parrots the alienating parents' behaviors, is disrespectful and disdainful towards the targeted parent, uses derogatory names for the rejected parents (i.e., "liar," "cheater," etc.) and almost universally claims "it's my choice" whether or not to spend time with the targeted parent. Such children often experience life with an all-or-nothing mentality, viewing one parent as "all good," while the other parent is "all bad," and often base their rejection of the targeted parent on borrowed scenarios (i.e., stories they have heard about the targeted parent from the alienating parent or their family

(cont'd on page 15)

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART I: UNDERSTANDING PARENTAL ALIENATION  
(CONT'D FROM PAGE 14)**

members). A child's absolute rejection of a parent, without guilt or ambivalence, is generally indicative of alienation efforts, as opposed to actual abuse or neglect.

The mantra of alienating parents is often, "I can't force my child to spend time with their Mom/Dad." Nevertheless, these parents can somehow manage to follow other legal requirements, including ensuring their children attend school and visit medical professionals.



However, because alienating parents have no interest in facilitating a relationship between their child and the other parent, they often adopt a passive-aggressive stance, making statements such as, "This isn't my fault," and "There's nothing that I can do about it." Yet, nothing could be further from the truth.

### Levels of Parental Alienation

While alienation is a complex variable with multiple dimensions (i.e., mild to severe, situational to chronic),<sup>1</sup> it occurs on a spectrum, ranging from mild to severe alienation.

Alienating parents generally lack insight into their behaviors, justifying their campaign of denigration as "simply telling the truth," or "telling it like it is," believing that their children do not need to be shielded from the parent's "reality." Alienating parents often have been wounded in their own childhood, which has resulted in self-esteem and identity conflicts, which is why they have a difficult time separating themselves from their children and allowing their children to spend time with the other parent.

*Mild Parental Alienation* is fairly common in shared custody arrangements. Often, one parent or their family/friends subtly or openly criticize the other parent (i.e., their character/habits, home, job, family, etc.). However, the criticism is not pervasive and generally, neither parent interrupts the other parent's custodial time. As a result, the child generally enjoys being with the targeted parent, although may not admit it to the alienating parent.

*Moderate Parental Alienation* occurs when the campaign of denigration by the alienating parent becomes more constant and the child rejects the targeted parent for frivolous reasons (i.e., "I never want to see my mother again because she doesn't allow me to play video games on weekdays"). Alienated children often have no ambivalence in their feelings towards their parents, generally loving one unconditionally and hating the other, while taking sides between their parents based on the lines they have drawn.

Most children are quick to claim their feelings towards the targeted parents are their own and not influenced by anyone else. What is particularly disturbing is that alienated children have no filter or guilt about what they say about the other parent (i.e., "You are a crook and

<sup>1</sup>Drozd, L.M. & Olesen, N.W. (2004). Is it abuse, alienation, and/or estrangement? A decision tree. *Journal of Child Custody*, 1(3), 65-106. doi: 10.1300/J190v01n03\_05.

(cont'd on page 16)

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART I: UNDERSTANDING PARENTAL ALIENATION  
(CONT'D FROM PAGE 15)**

robbed my father of everything he ever worked for”). However, the children’s perceptions are based almost entirely on stories told by the alienating parent, which the children repeat almost verbatim. Unfortunately, it is also common for the child’s animosity to spread to the targeted parent’s family and friends, encompassing once-favored and previously beloved grandparents, aunts, uncles, and cousins.

*Severe Parental Alienation* is just one step removed from moderate alienation, and is recognized by the child’s absolute disdain for and refusal to interact with the targeted parent or their family in any way. These cases are often the most difficult for targeted parents and the courts because the alienated parent generally has a history of enabling these children to ignore the feelings of the targeted parent and disregard court orders. Children who are severely alienated often have an authentic belief that if they show any affinity or affection for the targeted parent, the alienating parent will be upset and may even abandon them. The child is, quite literally, involved in a parental tug-of-war, and the only means of survival without being pulled apart is for the child to let go of the relationship with one parent.

### **The Role of the Targeted Parent**

While parental alienation is often viewed as a one-way street, it is not uncommon for targeted parents to unwittingly contribute to their own demise. Commonly, targeted parents respond to a child’s unjustified rejection with anger and contempt, which serves to further justify the child’s disdain for that parent. However, with a little bit of intervention and training, targeted parents can be redirected, as they are generally more emotionally stable than alienating parents.

Training for targeted parents on HOW to respond starts with a few simple phrases, such as “I am sorry that

you feel that way,” “Is that your Mother talking or you?,” “I am glad that you are smart enough to know the truth,” or simply “Really?” These phrases work in almost any situation to help a targeted parent to respond to potential conflicts without anger.

### **One Caveat — Kids Lie**

It is vital to acknowledge that children may lie and manipulate situations such as their parents’ conflict for their benefit or, in cases of severe parental alienation, merely to survive in the war between their parents’ households. Parents embroiled in a constant battle with one another rarely give the other the benefit of the doubt, and often aggressively confront the other parent at every accusation the child may make, sending inflammatory text messages or emails at the first hint of poor parenting by the other parent. For example, a child who claims that s/he was not fed at their mother’s home may also be omitting the fact that s/he did not like what was served for dinner and refused to eat. Unfortunately, alienated children tend to be empowered in their defiance and resistance by the alienating parent, which only escalates the cycle of conflict. Alienating parents often allege that the targeted parent has abused the children and exaggerate stories of the targeted parent starving, disciplining, or otherwise harming the children.

While every allegation of child abuse or neglect must be investigated, the reality is that even when a parent has verbally, physically or sexually abused a child, the child generally wants some contact with that parent. This is why a child’s *absolute rejection* of a parent, without guilt or ambivalence, is generally indicative of alienation efforts, as opposed to actual abuse or neglect.

### **The Effect of Alienation on Children**

Alienation is considered one of the most damaging forms of child abuse because it impairs every aspect of a

*(cont'd on page 17)*



**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART I: UNDERSTANDING PARENTAL ALIENATION  
(CONT'D FROM PAGE 16)**

child's being — social, emotional, physical, and psychological.<sup>2</sup> While parental alienation begins in the home, the learned disdain for another generally expands into the child's relationship with friends, teachers, school personnel, therapists, and law enforcement.

Parental alienation is particularly damaging to young children, who almost universally develop one or more of the following emotional and behavioral issues: low self-esteem, mental health issues such as depression and anxiety, sleep or eating disorders, substance use issues, delinquency, bedwetting/soiling, and/or life-long relationship problems.<sup>3</sup>

Ironically, many of these behaviors will manifest when the child returns from the targeted parent's care and are in the custody of the alienating parent. The alienating parent will then claim that the targeted parent caused the problem, however, this blame is misplaced. The child's problems manifest "in reverse," because children who experience mild to moderate levels of alienation view the targeted parent as unsafe or dangerous, and therefore, controls their anxiety until s/he returns to what the child perceives as the "safe" parent's home.

The effects of alienation are pervasive. Children who are alienated are often tasked with protecting the emotional stability of the alienating parent, who the child often perceives to be the victim of the targeted parent. It is common for these children to spy on the targeted parent, steal from the targeted parent's home, destroy

the targeted parent's personal property, collect documentation for the alienating parent to use in court, and even lie to protect the alienating parent. The alienating parent generally denies that s/he has influenced the child's behavior, but often responds to the child's stories of their escapades against the targeted parent with laughter, praise, and congratulatory comments (i.e., "good job" and "they deserve it"). When children are rewarded for harming a pivotal individual in their life such as a parent, they learn to dissociate themselves from the emotional damage they cause; this can lead to the development of psychopathic tendencies. The long-term effect of alienation extends into the child's social and emotional relationships throughout childhood and into adulthood.

This is where the court's role is vital to disrupt the cycle of alienation. While psychological interventions are necessary to disrupt the effects of parental alienation, without court enforcement, all other efforts will universally fail. It is vital that effective interventions be adopted to interrupt the cycle of parental alienation.

*In Part II of this article (next page), we will discuss Effective Judicial Interventions to Respond to Parental Alienation.*

<sup>2</sup> J. J., Kruk, E., & Hines, D. A. (2018). Parental alienating behaviors: An unacknowledged form of family violence. *Psychological Bulletin*, 144(12), 1275–1299. <https://doi.org/10.1037/bul0000175>.

<sup>3</sup> See Fidler, B. and Baja, N. 2010, *Children Resisting Post-Separation Contact With a Parent: Concepts, Controversies, and Conundrums*, Family Court Review, 48:10-47; Bernet, W. et al, 2010. Parental Alienation and the DSM V, American Journal of Family Therapy, 38: 76-187; see also Lownstein, L. (2002), *Problems Suffered by Children Due to Parental Alienation*, Justice of the Peace 166:24 pp. 464-466.



## EFFECTIVE JUDICIAL INTERVENTIONS TO RESPOND TO PARENTAL ALIENATION: PART II

*By Judge Margaret Pickard, Stephanie Holland, Psy.D.,  
and Lipika W. Jain, Psy.D.*



This is the second part of a two-part series addressing Effective Judicial Interventions to Respond to Parental Alienation. Part 1 of this article explained what parental alienation is and how to identify it. Part II will provide effective strategies that can be used by attorneys and judges to interrupt the cycle of parental alienation and reduce the frequency that these families return to court.

Part I explained that parental alienation occurs when one parent psychologically manipulates a child to reject the other parent with whom the child once had a

supportive and loving relationship by characterizing the targeted parent as dangerous, inadequate, or inappropriate. The alienating parent is unwilling or unable to focus on the needs of the child and effectively uses the child as a weapon in the parents' perennial domestic feud. While various methods have been proposed to target parental alienation (i.e., parent coordination and intensive reunification therapy, among others), judicial intervention is generally the most effective and long-lasting way to disrupt parental alienation.

*(cont'd on page 19)*

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 18)**

**Why the Court's Role is Vital in Disrupting Alienation**

Judges who take the time to educate themselves about effective judicial interventions have the ability to abruptly disrupt alienation and give parents a reality check to protect and safeguard the interests of a child. The court is, for all practical purposes, the gatekeeper for alienating behaviors. The judge is generally the only person who can impose an enforceable consequence when an alienating parent fails to facilitate a child's relationship with the other parent.

Just as the court expects custodial parents to ensure that a child attends school or visits the doctor's office, a custodial parent should also facilitate a child's relationship with the other parent. The court should make it clear that any parent who interferes with and/or enables a child to refuse contact with the other parent may not be an appropriate custodial parent. While the court cannot change custody solely due to parental misconduct, there are other mechanisms that the court can and should employ to identify and address custodial interference.<sup>1</sup>

***Strategy 1: Effective Parenting Plans***

Parents involved in high conflict custody disputes often lack the tools and resources to create an effective Parenting Plan. While parents participating in cooperative parenting can work effectively with a generic plan that provides a simple outline for a shared custody schedule, parents in high conflict cases require extremely detailed plans that identify exactly when/where a custodial exchange will occur, who will be present and *who will not be present*, who will provide transportation, and what the consequences will be

<sup>1</sup>See *Lewis v. Lewis*, 132 Nev. Adv. Rep. 46, 373 P.3d 878 (2016) (the district court cannot consider a parent's failure to follow court orders in the best interest determination child custody modification); *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 330, 328 (1993) (custodial change cannot be used as a sword to punish parental misconduct).

should a custodial exchange not occur. The court should, at the very least, have a default Parenting Plan that serves as a detailed contingency plan should parents' ability to co-parent effectively falter.

***Strategy 2: Effective Co-Parenting Communication***

Warring parents often send inflammatory texts or emails at the first hint of bad parenting by their co-parent. This is one reason why programs that record parents' communications in unalterable formats and have a "tone meter," such as Our Family Wizard or Talking Parents, can be invaluable in reducing the level of parental conflict.

The court should set guidelines for parents who cannot communicate civilly with one another and/or deluge the other parent with long emails/text/phone messages each day and/or each week. Generally, two emails per week (four sentences of no more than 20 words) between co-parents is sufficient to convey necessary information, at least for parents who cannot communicate civilly. The email should contain EITHER (1) a specific question about the child and/or the child's schooling or activities or (2) specific information about the child and/or the child's activities.

Neither parent should provide comments or opinions about the other parent, their home, their family, or their significant other. The court can designate the days when parents should be required to check their emails each week (for example, Tuesday and Thursday) and may need to limit other forms of communication, such as phone calls and texts when there are reports of repeated incidents of harassment.

These guidelines are intended for parents who cannot effectively co-parent; they are not intended for parents who work well together and are able to attend joint events for their children. Specific guidelines are,

***(cont'd on page 20)***

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 19)**

however, necessary for parents who are warring on a daily basis and have a clear breakdown in communication, which inevitably filters down to the children.

This is where the court's role is vital to disrupt the cycle of alienation and ensure all parties comply with directives of the court. While psychological interventions are necessary to disrupt the effects of parental alienation, without court enforcement, all other efforts will universally fail.

*Strategy 3: Effectively Limiting Teenage Discretion*

NRS 125C.0035(4) requires that the court consider the “wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.” While children should have a voice in the court's decisions, they should not have the choice to decide when and if they will cut off contact with one parent. This is particularly true in cases of parental alienation, when the child has often been programmed to believe that the alienating parent has been wounded by the targeted parent and, therefore, the child will attempt to protect the alienator at all costs, even at the expense of their own well-being.

Courts often unwittingly enable alienation when they authorize youth, often teens, to decide when and if they will have contact with a parent. These types of orders, while valuable in LIMITED circumstances, create an unhealthy parent-child paradigm where a parent must literally bribe a child to spend time with him/her. After all, what teenager wants to visit a parent who is cleaning the garage, working in the garden, or going for a hike, when the other parent is promising lunch at a favorite restaurant, a shopping trip, or unlimited video games? Allowing a child of any age to control a parent's ability to parent interrupts a parent's constitutional right to parent and allows a child to become entrenched in their rejection of a targeted parent.

Additionally, it is not uncommon for youth, particularly teenagers, to have conflicts with their parents, especially if a parent establishes appropriate boundaries, including cell phone restrictions, curfews, school attendance, homework routines, church participation, and dating limitations. While separated parents will ideally coordinate the rules between homes, realistically, parents who engage in alienating behaviors lack the emotional maturity to develop or enforce normative parenting boundaries.

Teenage discretion provisions of a court order should never empower a child to dictate when and if they will spend time with a parent. A productive use of teenage discretion is to allow a youth who is in high school to elect ONE 24-hour time period per calendar month when they can exercise limited discretion to not follow the court-ordered timeshare.<sup>2</sup> This gives a youth control over his or her schedule without empowering a child to interrupt the timeshare provisions. In addition, it is common for an alienating parent to encourage, cajole, or guilt a child into refusing to spend time with the targeted parent, so removing this option often relieves a child of having to “choose” one parent over the other.

*Strategy 4: Effectively Using Timeshare Adjustments*

If the court identifies that one parent is alienating the children and interfering with the other parent's timeshare, the court can implement strategies which can be effective, even on a temporary basis. If the court's attempts to admonish an alienating parent to “play fair,” “follow the orders,” or “send the kids to the Mom/Dad,” have failed, a temporary timeshare modification or “makeup time” can often be effective, particularly when coupled with therapeutic interventions for the alienating parent.

<sup>2</sup>The elected waiver by the youth should NOT count against the parent's timeshare period, as set forth in the Parenting Plan. This prevents an alienating parent from consistently encouraging a youth to exercise “teenage discretion” in order to defeat the joint physical custody timeshare of the targeted parent.

*(cont'd on page 21)*

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 20)**

A balanced timeshare, facilitated by and involving the alienating parent, is often one of the most effective steps in repairing the relationship between the child and targeted parent. However, when an alienating parent completely refuses to facilitate the other parent's timeshare or feigns compliance but does not ensure that child actually visits the other parent, the court should implement timeshare adjustments.

When implementing timeshare adjustments in child custody determinations, the court should consider a "two-for-one" makeup policy, indicating that the alienating parent will surrender two days of custodial time for each day s/he personally restricts or interferes with the other parent's parenting time. This would also be applicable when the alienating parent enables the child to resist the other parent's timeshare. In the case of severe alienation, a temporary timeshare adjustment (i.e., cumulative makeup time for 30, 60, or 90 days) may be the only effective intervention to remove the child from the constant parental tug-of-war. Courts can and should be creative in imposing sanctions for parents who fail to facilitate their child's relationship with the other parent.

In considering any custodial arrangements, the court should always determine what custodial arrangements are in the best interests of the child. Abruptly cutting off a child from a parent who the child perceives as needing emotional and physical support may place an undue burden on a child. However, in the case of severe alienation, a temporary timeshare adjustment, such as cumulative makeup time in extended blocks of time, may be the only effective intervention to remove the child from the constant parental tug-of-war by the alienating parent. Severely alienated children often have an authentic belief that if they show any affinity or affection for the targeted parent, the alienating parent will be upset and may even abandon them. While some interventions dictate an abrupt and complete change in

custody, a balanced timeshare, which the court requires the alienating parent to facilitate, is one of the most effective steps in repairing the relationship between the child and the targeted parent.

Alienated children do not recognize that they are being manipulated by a psychologically wounded parent, who they often perceive as the victim of the alienating parent. These children generally perceive the alienating parent as needing emotional and physical support, which the child takes upon themselves to provide. This places an undue burden on a child, who often becomes the emotional caretaker and confidant of the alienating parent.

*Strategy 5: Effectively Limiting Non-Custodial Parent-Child Phone Calls/Text Messaging*

Alienating parents often engender a co-dependent relationship with their child. A dynamic is often created where a child believes that they need the approval of the alienated parent to make day-to-day decisions (i.e., how/when to complete homework assignments, access to social media/friends) while at the rejected parent's house. The child's co-dependent relationship with the alienating parent further degrades their relationship with the targeted parent.

As part of this dynamic, it is common for alienating parents to believe that their child needs to speak to them every day. The expectation for daily phone contact will be couched as a plea to "say good morning or good night," to hear about the child's day at school, or the need to read their child a bedtime story. Inevitably, these phone calls turn into more of an opportunity for the alienating parent to disrupt, comment on, or criticize activities or routines in the custodial parent's home. The calls/texting can become a "gripe session" for the child, who has learned to tell the alienating parent what they want to hear about the targeted parent (i.e.,

*(cont'd on page 22)*

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 21)**

“Dad doesn’t allow me to have my cell phone after 6:00 p.m.,” “Mom is feeding us McDonald’s again tonight,” “I was late to dance practice,” etc.), which further fuels the conflict between the parents.

It is not uncommon for alienating parents to buy a phone for a child to take to the other parent’s home, telling the child that the other parent is not entitled to take the phone away or limit the child’s access to the phone. Many of these parents may set a password on the child’s phone, tablet, computer, or other device, telling the child not to share it with the targeted parent, further creating the perception that the targeted parent is unsafe or a threat to the child. *This should not be allowed by the court.* The court should remind the parents that each parent has the right to set the rules in his/her own house, based on parameters set by the court for the best interests of the child. Parents should understand that they cannot follow their child into the other parent’s home and interrupt the custodial parent’s timeshare.

Children do not fare well, emotionally or psychologically, in a constant tug-of-war between their parents. In a typical scenario, the child is playing a game, doing homework, getting ready for bed, or participating in a myriad of other activities in the custodial parent’s home. Then, whether expected or not, the other parent calls. The child has to psychologically disengage with the custodial parent, switch gears to engage with the calling parent, and if the calling parent is the alienating parent, she or he will likely disparage whatever the child was enjoying doing at the custodial parent’s home. When this occurs, it is common for the children to respond with “hmm,” “uh huh,” “ok,” whisper into the phone, or go into another room to have the conversation. These behaviors are clear indications of a child who feels caught in the middle and cannot speak freely to one or both parents. Following the phone call, the child will often disengage with the custodial parent, at least for a

brief period of time. This cycle is not healthy for any child.

It is vital to disrupt an alienating parent’s “reach” into the targeted parent’s home. The court should set clear guidelines for texting and phone calls to allow each parent to have uninterrupted time to bond with the custodial parent. It is not psychologically damaging for a child over the age of five to spend a week with one parent and have one interim phone call with the non-custodial parent in the middle of the week or, in extremely severe cases, no phone calls. That is because a week on/week off custodial arrangement is generally six uninterrupted days with the custodial parent, with the exchange to occur on the 7<sup>th</sup> day. Children age 4 years and under should have contact with the non-custodial parent at least every other day; however, the phone call can be brief and preferably include video contact, which is more engaging for young children than a phone call. As a corollary, children ages 3-5 will generally do better with a 2-2-5 schedule, rather than a week on/week off, unless they are moving between homes with a sibling, who can provide a stable influence for the child.<sup>3</sup>

If parents can effectively co-parent, they can agree, in writing, to a schedule for phone calls that works for both households. However, in high conflict cases, it is vital for the child’s well-being and stability that the court discourage mid-visit interim phone calls, texting, or other contact by the non-custodial parent.

---

<sup>3</sup>There are multiple variables to be considered, as a child under the age of three should have a graduated schedule to work up to being away from a primary caregiver for a five day period; the child should not be suddenly removed from a primary caregiver for extended periods. If the parents are recently separated and/or one parent has been the primary caregiver and the child is not accustomed to spending extended time with the other parent, the time periods should GRADUALLY increase to up to five days. Children 0-2 should have regular and consistent contact with both parents. Some courts have adopted a 2 day on/2 day off rotating schedule for younger children, who are not breastfeeding. Ideally, children under age 2 will spend the majority of overnights with one parent, with consistent and frequent contact with the other parent.

*(cont'd on page 23)*

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 22)**

*Strategy 6: Effectively Assessing Family History*

It is vital that judges be able to identify signs of alienation, in order to assess the difference between parental alienation and estrangement, the latter justifying a youth's desire for limited contact with a parent. To identify estrangement, the court should determine if Child Protective Services has ever substantiated a case of abuse/neglect against either or both parents, if either or both parents have a history of substance abuse and/or mental health problems, and if any of the parties' children have mental health issues. Claims by one parent that the other parent allows children to eat cereal for every meal and play video games for hours on end are not a basis, on their own, to limit that parent's custodial contact with a child.

When speaking to parents about the court's involvement in custody matters, the court should set clear expectations and clarify with parents that the court intervenes in a parent's custodial time only when there are significant and recurring issues that impact the well-being of the children. Many parents do not understand that the court's role is not to micro-manage starkly different and potentially ineffective parenting styles (i.e., allowing children to stay up late on weekdays or have a television in their room). Counsel, as well as the court, should manage parents' expectations so that a parent understands the court's limitations before entering the courtroom.

*Strategy 7: Effective Professional Interventions*

Professionals who are experienced in dealing with parental alienation recognize that the involvement of the targeted parent is essential for effective therapeutic interventions. It is not uncommon, however, for professionals who are unfamiliar with the patterns of alienation, to engage in individual therapy with just the child and/or the alienating parent, which further

entrenches the child and too often results in the therapist aligning him/herself with the child and rejecting the position of the targeted parent. Therefore, while initial individual sessions may be useful to prepare the child for engagement, the child and targeted parent *must* attend sessions together, beginning early in treatment.<sup>4</sup> Hopefully, the targeted parent will have photos, drawings from the child, or other reminders of the happy memories that the two once shared. Once warm memories are remembered, hopefully the child will begin to engage, when faced with the reality that the child once enjoyed being with the alienated parent.

One strategy that is often used in working with alienated children is asking the child to list ALL of the negative beliefs that she/he has about the targeted parent. Then, working down the list, the therapist asks the child for examples of each complaint, which are generally flimsy or originate from a borrowed scenario (a story heard from others). A child may then be asked for specific examples of when the targeted parent was kind, loving, giving, or caring, and if the child is unable or unwilling to respond, the targeted parent can be prompted to provide concrete examples.

This process of rebuilding memories reminds a child that there was once a positive relationship with the targeted parent. Alienating parents often project their own shortcomings onto the targeted parent, and when a child works through each complaint and the basis, or lack of thereof, for the complaint, these children often experience a huge sense of relief when they are given the

---

<sup>4</sup>See Association for Family and Conciliation Courts' Guidelines for Court Involved Therapy, found at <https://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/Guidelines%20for%20Court%20Involved%20Therapy%20AFCC.pdf>.

*(Cont'd on page 24)*

**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 23)**

opportunity to figure out the truth on their own.<sup>5</sup>

Other professional interventions, such as Parent Coordination for families that can afford it, are excellent opportunities for the court to have a neutral “boots on the ground” monitor to ensure that the parents are complying with the court’s orders.

*Strategy 7: Fee Shifting*

For most litigants, fee shifting can be a very effective tool for judges to use to disrupt alienating parents’ behaviors. Unfortunately, most alienating parents feign innocence when they are accused of interfering with their child’s relationship with the other parent. However, unless a direct and immediate consequence is imposed, such as timeshare adjustments or fee shifting, the alienating parent’s actions will continue to escalate.

Presumptive fee shifting, including attorney’s fees, should occur if one parent is not following the court’s order, specifically, requiring the children in their care to visit with the other parent. Even when the non-compliant parent maintains that they are justified in withholding the children or fail to induce a child to visit the other parent, absent involvement by Child Protective Services, the court will only reinforce the false message “I can’t force my kids to go” unless and until the court imposes a consequence on the non-complying parent.

<sup>5</sup>See Hietler, Susan, PhD (2019), *Parental Alienation: What Therapists Need to Know*, Psychology Today, found at <https://www.psychologytoday.com/us/blog/resolution-not-conflict/201909/parental-alienation-what-therapists-need-know>.



Remember, *it is the parent who is not following the court’s orders and interfering with the other parent’s constitutional right to parent their children.* Fee shifting, at least until an evidentiary hearing, will often self-correct the issue when one parent withholds a child from the other parent.

While fee shifting may not be effective for cases when the alienating parent has no income or assets, for some litigants, it is a blow to their pocketbook and ego, and may give them pause to think twice before interfering

*(cont'd on page 25)*



**EFFECTIVE JUDICIAL INTERVENTIONS  
TO RESPOND TO PARENTAL ALIENATION  
PART II  
(CONT'D FROM PAGE 24)**

with the other parent's timeshare. Unfortunately, far too many judges are reluctant to impose penalties of any kind when a predictable and certain penalty will likely resolve the immediate issue.

**Conclusion**

Time is of the essence in identifying cases of parental alienation. While a forensic psychological evaluation or child custody evaluation is often warranted, the resources (i.e., time and financial expenses) to obtain such evaluations often delay decision-making. The court

is often the sole source of authority to manage cases of parental alienation, and therefore, judges must determine effective interventions and consistently follow their own guidelines to create a reputation of enforcing timeshares in order for parents to believe that change is possible.

It is the responsibility of the courts to act as gatekeepers and set clear expectations for parents to ensure that consequences will be imposed for violating the court's order. Every court's mantra should be, "See It. Call It. Stop It." The future of our children depends on it.



JUDGE MARGARET PICKARD currently presides over dependency cases in the Eighth Judicial District Court. Prior to taking the bench as a District Court Judge, Judge Pickard served as a Hearing Master for five years for the Family Division, hearing cases in child abuse and neglect and juvenile delinquency. From 2014-2018, Judge Pickard served on the Executive Council of the Nevada State Bar's Family Law Section and as the Co-Editor of the *Nevada Family Law Report*.

DR. STEPHANIE HOLLAND is a licensed psychologist in the states of Nevada and Colorado, and has been in private practice since 1998. All throughout her professional career, Dr. Holland has worked alongside family court to provide comprehensive evaluations and assessments. She has testified as an expert on areas including trauma, high conflict, child development and relocation. She also works with the Juvenile Justice System and the Department of Family Services evaluating youth. She has co-founded two 5013c non-profit organizations over the span of her professional career: Child Focus, now a part of St. Jude's Ranch for Children, which advocates for siblings to remain together in care, and most recently, Wake Up, a re-entry program to improve the lives of disconnected youth. Dr. Holland has held the position of Exam Commissioner for the State of Nevada Board of Psychological Examiners for five years and is now an appointed Board Member of the State Board of Psychological Examiners.

DR. LIPIKA W. JAIN, PSY.D. is a licensed clinical psychologist in Illinois and Nevada with a demonstrated history of training and experience working largely within forensics and family court with children/adolescents and their families. In addition, Dr. Jain's education and experience working with other diverse populations within the outpatient level of care has paved her current path into working with adolescents within an intensive outpatient program (IOP) and partial hospitalization program (PHP) at Compass Health Center. Aside from her passion for her work, Dr. Jain loves spending time with her family and dog, watching movies and television shows, trying new restaurants, and traveling as much as possible.