



### Parental Alienation During and After Divorce

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Badmouthing of one party by the other party often is an unfortunate by-product of divorce. When child custody is involved, however, the denigration of one parent by the other parent may have devastating legal and psychological consequences.

A parent may even deliberately strive to alienate the child from the other parent and undermine their relationship. “Parental alienation” is the manipulation of a child into having unwarranted fear, hostility, or dislike towards a parent. This article will address: (i) general factors considered in custody cases; (ii) the elements of parental alienation; (iii) legal consequences of parental alienation; and (iv) the deleterious impact of parental alienation on children.

#### Custody Overview.

The prevailing consideration in custody cases is the best interests of the child.<sup>i</sup> In assessing the best interests of the child, the court examines the totality of the circumstances.<sup>ii</sup> Among the circumstances that are scrutinized include: the quality of the home environment, the guidance each parent provides for the child, the ability of each parent to provide for the child’s emotional and intellectual development, the ability of each parent to financially provide for the child, the relative fitness of each parent, the child’s primary caretaker, and any existing custodial arrangement.<sup>iii</sup>

Depending upon age and maturity, a child’s preferences also may play a significant role in a custody determination.<sup>iv</sup> A child’s expressed wishes, however, are not determinative. Rather, they are entitled to great weight.<sup>v</sup>

In addition to the aforementioned factors, the effect that an award of custody to one parent might have on the child’s relationship with the other parent is considered by courts.<sup>vi</sup> For example, in Bliss, on Behalf of Ach v. Ach, the court determined that the best interests of the child would be served by awarding primary custody to the mother.<sup>vii</sup> In reaching this decision, an important consideration was its finding that the father would attempt to minimize the mother’s role if he was awarded custody.<sup>viii</sup> Similarly, in Neuman v. Neuman, the court awarded residential custody to the father, in part based upon its determination that he was more likely to abide by the visitation schedule and foster a relationship with the other parent.<sup>ix</sup>

#### Parental Alienation.

It is well settled that parental alienation of a child, “is an act so inconsistent with the best interests of the children as to, per se, raise a strong probability that the [offending parent] is unfit to act as the custodial parent.”<sup>x</sup> Although parental alienation is not a new phenomenon, it continues to be encountered in recent cases.

Parental alienation may occur in varying degrees. On the lesser side of the spectrum, it may involve one parent speaking badly or criticizing the other parent directly to, or in front of, the children. Typical statements include, mom or dad “doesn’t love you anymore,” “is breaking up the family”, “is keeping all the money and so we have none.” The parent also may share details of the divorce proceeding with the child and/or blame the dissolution of the marriage on the other parent. Consequently, the negative commentary undermines the child’s relationship with the other parent.

In other cases, one parent may actively attempt to influence the child to share his or her negative views of the other parent. Taken further, a parent may try to impede or block altogether their child’s telephone communication or access time with the other parent.

At the extreme level, parental alienation can culminate in false allegations of verbal, physical, or sexual abuse. The alienating parent may falsely accuse the other parent of abuse or exaggerate incidents that occurred and attempt to brainwash the child into believing the abuse took place.

Parental alienation may be difficult to prove. In order to assist with the fact finding, a court has the discretion to order a forensic evaluation in custody and visitation matters. In C.S. v. A.L., the court recognized that the “value of the essential role played by the court-appointed neutral forensic psychologist is now so well-recognized that such an appointment is essentially required in any custody litigation where there are serious questions of parental fitness.”<sup>xi</sup> The court in C.S. v. A.L. proceeded, over the objections of one party, to direct a forensic evaluation to help in its examination of whether parental alienation existed where the mother’s visits with her child steadily deteriorated and eventually ceased.<sup>xii</sup>

### **Legal Consequences: Custody, Dollars and Cents, and Contempt.**

Courts may impose various remedies and deterrents in cases involving parental alienation. Among the remedies include the authority to change custody, financial repercussions, and contempt.

Change of Custody. As the result of parental alienation, a change in custody may ensue. Where there has been a change in circumstances that adversely affects the child’s best interests, a court may modify the existing custodial arrangement.<sup>xiii</sup> Moreover, a continued deterioration in the parties’ relationship may be a sufficient change in circumstances to modify a prior order of custody.<sup>xiv</sup> For example, in Posporelis v. Posporelis, the court modified a prior agreed-upon order of joint legal and physical custody by awarding the wife sole custody.<sup>xv</sup> This decision was premised upon the court’s finding that the father behaved in a manner so as to alienate the parties’ child from the mother, as well as that he denied that he exhibited alienating behavior and refused counseling.<sup>xvi</sup>

Likewise, in Greene v. Robarge, the court upheld the modification of the custodial agreement from joint custody, with primary physical custody to the mother, to an award of sole custody to the father due to the mother deliberately undermining his relationship with the children.<sup>xvii</sup> In Greene, the mother interfered with the father’s parenting time with the children and vilified the father to the children. She instructed the children to rip up notes from their father, stating that there was no room in the apartment. In another instance, shortly after the father arrived, the mother hung up a “Stop Domestic Violence” sign on her home with the help of the children. The court-appointed forensic evaluator testified that the children appeared to have been brainwashed by the mother into believing that their father was “mean” and that his decision to leave the relationship also constituted an abandonment of them.

The focus in a change of custody proceeding remains the best interests of the child. Therefore, a change in custody is not warranted in and of itself due to parental alienation. For example, in Lew v. Sobel, the court upheld the denial of the father’s application to change custody despite the mother’s interference with his visitation.<sup>xviii</sup> In making this determination, the court found that, despite the presence of parental alienation, a change in custody was not in the children’s best interests where their relationship with the mother was so strong that it would have been harmful to the children to change custody.<sup>xix</sup> Rather, a change in custody is only warranted if the totality of the circumstances warrants the modification in the child’s best interests.<sup>xx</sup>

Moreover, while a parent’s unilateral suspension of visitation is a factor in determining a change of custody, the underlying reason for the suspension will be considered. For example, in Kelly v. Sanseverino, the court found while the mother, as the custodial parent, should not have unilaterally suspended the visitation, the father was not blameless.<sup>xxi</sup> He made repeated threats, including in the child’s presence, to kill the mother and/or flee with the child to another state, which was the basis for her suspension of visitation.<sup>xxii</sup>

Supervised Visitation. In instances of parental alienation, the court may direct the offending party to have supervised visitation with the child.<sup>xxiii</sup> Moreover, the award of such supervised parenting time does not constitute an unlawful imposition of a party’s access with the child.

Child Support and Maintenance. Parents are obligated to financially support their child until age 21.<sup>xxiv</sup> However, pursuant to statute and case law, a custodial parent’s deliberate, unjustified, frustration of, or active interference with, visitation rights or parental alienation may result in the suspension of child support payments.<sup>xxv</sup>

For example, in Lew v. Sobel, as a result of the mother’s parental interference, the court directed the father to pay half of his child support payments to her attorney’s escrow account until she complied with the court-ordered visitation and stopped interfering with his visitation.<sup>xxvi</sup> As an additional remedy in Lew, in light of the circumstances, the court reallocated the parties’ responsibility to pay fees for therapeutic visitation, the child’s attorney, and the forensic evaluator, so that the mother was responsible to pay for a greater share of those costs.<sup>xxvii</sup>

Likewise, in Thompson v. Thompson, the court suspended child support payments where the mother deliberately interfered with the father’s visitation rights.<sup>xxviii</sup> In Thompson, the evidence demonstrated that the mother disparaged the father to the child, manipulated the child’s loyalty, failed to encourage visitation, and supported the child’s decision to refuse visitation.<sup>xxix</sup>

Parental access is an important right of the non-custodial parent and the child. Therefore, as another financial remedy, spousal maintenance may be suspended as a consequence of parental alienation.<sup>xxx</sup>

**Contempt/Jail.** As with any other case, to prevail in a contempt application, the moving party must demonstrate by clear and convincing evidence that the other party has violated a court order. This remedy is available to redress a violation of a court order pertaining to parental access.

Upon a finding of contempt, a court may impose a fine and/or hold that a party shall be incarcerated. In *Lauren R. v. Ted R.*, after conducting a fact-finding hearing, the court sentenced a party to incarceration for a six weekends, to be served on alternate weekends when the other parent was entitled to access time with the children.<sup>xxxii</sup> The incarceration ensued after attempts at remedial intervention, including parenting coordination and counseling, were unsuccessful.<sup>xxxiii</sup> The court determined the existence of parental alienation, which included the mother's preventing the father's parental access, threats of punishing the children for wanting to spend time with their father (including on a tape recording), falsely representing she had sole rather than joint custody, failing to make joint decisions with the father, castigating the father in front of the children (calling him a "deadbeat", "loser", "f-g asshole", and stating "we all hope you die of cancer"), and making false allegations of sexual abuse.<sup>xxxiii</sup>

### Psychological Impact on the Child.

The consequences on children who have been alienated from their parents can be harsh. They are deprived of a parental relationship that would otherwise may have been positive and loving. As a result of the alienation, a child may refuse to visit with the other parent and the visits may be unpleasant. The child may be unjustifiably afraid or hostile toward the other parent, or refuse to see them.

Furthermore, the hostility may spread to other family members. The alienation may extend to grandparents, aunts, uncles, and siblings.

A child who has been alienated from a parent may feel rejected or abandoned.<sup>xxxiv</sup> The alienation may cause the child to suffer from low self-esteem, self-hatred, and depression.<sup>xxxv</sup> It may impact other areas of a child's life, such as school performance and conduct in school.<sup>xxxvi</sup> It may cause a child to act out or start bullying, whether at home or in school.<sup>xxxvii</sup> It also may cause child to disengage from others or activities that they used to enjoy.<sup>xxxviii</sup>

Effective parental educational programs early in the process, as well as the involvement of parenting coordinators and mental health professions, are important to help deter parental alienation and its side effects.

### Conclusions.

Two recent similar situations spurred the authors to write this article. In one case, the father was an utterly absentee parent during the marriage and divorce. Once the child was a teenager, the father disparaged the mother to the child, maintained fewer household rules (such as allowing the child to stay out late and not requiring that she advise where she was going), and enticed her with his more lavish lifestyle. Now the father is trying to terminate his payment of child support to the mother, which was his stated goal since day one of the divorce when he told her she would leave the marriage with just her suitcase. In the second case, a mother raised her two children with the father being minimally involved, and yet the father seized an opportunity to turn their 17 year old son against her to the extent the child refuses to see his mother for no articulated reason. The father is now alleging a change of circumstance and trying to eliminate his child support obligation.

Often parties are oblivious of the deleterious consequences of parental alienation. Divorcing parents should protect their children from conflict, however bitter their animosity may be with each other. It is critical to recognize the signs of parental alienation before it reaches a level that makes it extremely difficult to remedy. Finally, it is advisable, particularly in contested custody cases, for the parties to consult with professionals who will help navigate the process and encourage the parties to exercise self-restraint and behave in the child's best interests.

Divorces between parties come to an end. Parental alienation, however, may leave a lasting rupture in families. Matrimonial lawyers and mental health professionals can help play a key role in modulating the harmful effect of this phenomenon.

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<sup>i</sup>McKinney's Consolidated Laws of New York, Dom. Rel. §240 (2010); *Eschbach v. Eschbach*, 56 N.Y.2d 167 (Ct. of Appeals 1982); *Merlis v. Merlis*, 253 A.D.2d 799 (App. Div. 2d Dept. 1998).

<sup>ii</sup>*Carrasquillo v. Cora*, 60 A.D.3d 852 (App. Div. 2d Dept. 2009); *Zafran v. Zafran*, 306 A.D.2d 468 (App. Div. 2d Dept. 2003).

<sup>iii</sup>*Melissa C.D. v. Rene I.D., J.R.*, 117 A.D.3d 407 (App. Div. 1<sup>st</sup> Dept. 2014); *Palmer-Cardona v. Cardona*, 63 A.D.3d 1162 (App. Div. 2d Dept. 2009); *Esposito v. Shannon*, 32 A.D.3d 471 (App. Div. 2d Dept. 2006).

<sup>iv</sup>*Melissa C.D.*, supra.

<sup>v</sup>Id.

<sup>vi</sup>*James Joseph M. V. Rosana R.*, 32 A.D.3d 725 (App. Div. 1<sup>st</sup> Dept. 2006); *Young v. Young*, 212 A.D.2d 114, 118 (App. Div. 2d Dept. 1995).

<sup>vii</sup>56 N.Y. 2d 995 (Ct. of Appeals 1982).

<sup>viii</sup>Id.

<sup>ix</sup>19 A.D.3d 383 (App. Div. 2d Dept. 2005).

<sup>x</sup>*Haliories v. Haliories*, 126 A.D.3d 973 (App. Div. 2d Dept. 2015); *Jarlost v. Carden*, 124 A.D.3d 968 (App. Div. 3<sup>rd</sup> Dept. 2015); *Matter of Bennett v. Schultz*, 110 A.D.3d 792 (App. Div. 2d Dept. 2013).

<sup>xi</sup>55 Misc.3d 1212(A) (N.Y. Family Ct., Bronx County 2017).

<sup>xii</sup>Id.

<sup>xiii</sup> Matter of Deuel v. Dalton, 33 A.D.3d 1158 (App. Div. 3<sup>rd</sup> Dept. 2006); Matter of Peck v. Bush, 35 A.D.3d 1118 (App. Div. 3<sup>rd</sup> Dept. 2006).

<sup>xiv</sup> Matter of Rosario WW v. Ellen WW, 309 A.D.2d 984 (App. Div. 4<sup>th</sup> Dept. 2006); Matter of Adams v. Franklin, 9 A.D.3d 544 (App. Div. 3<sup>rd</sup> Dept. 2004).

<sup>xv</sup> 41 A.D.3d 986 (App. Div. 3<sup>rd</sup> Dept. 2007).

<sup>xvi</sup> Id.

<sup>xvii</sup> 104 A.D.3d 1073 (App. Div. 3<sup>rd</sup> Dept. 2013).

<sup>xviii</sup> 46 A.D.3d 893 (App. Div. 2d Dept. 2007).

<sup>xix</sup> Id.

<sup>xx</sup> Id.

<sup>xxi</sup> 278 A.D.2d 535 (App. Div. 3<sup>rd</sup> Dept. 2000).

<sup>xxii</sup> Id.

<sup>xxiii</sup> Posporelis v. Posporelis, 41 A.D. 3d 986 (App. Div. 3<sup>rd</sup> Dept. 2007).

<sup>xxiv</sup> McKinney's Consolidated Laws of New York, Dom. Rel. §240 (2010); Family Court Act §413(1)(a).

<sup>xxv</sup> Carmen C. v. Tracy F., 52 Misc.3d 1213(A) (N.Y. Family Ct., Monroe County 2016); Rodman v. Friedman, 112 A.D.3d 537 (App. Div. 1<sup>st</sup> Dept. 2013); F.S.-P v. A.H.R., 17 Misc.3d 390 (N.Y. Family Ct., Nassau County 2007).

<sup>xxvi</sup> 46 A.D.3d 893 (App. Div. 2d Dept. 2007).

<sup>xxvii</sup> Id.

<sup>xxviii</sup> 78 A.D.3d 845 (App. Div. 2d Dept. 2010).

<sup>xxix</sup> Id.

<sup>xxx</sup> McKinney's Consolidated Laws of New York, Dom. Rel. §241 (2010).

<sup>xxxi</sup> 27 Misc.3d 1227(A) (N.Y. Sup. Ct., Nassau County 2010).

<sup>xxxii</sup> Id.

<sup>xxxiii</sup> Id.

<sup>xxxiv</sup> Parental Alienation Among College Students, Hands, Aaron J. Hands; Warshak, Richard A., The American Journal of Family Therapy, 39:431-443, 2011.

<sup>xxxv</sup> The Impact of Parental Alienation on Children, Kruck, Edward, April 2013, available at <https://www.psychologytoday.com/blog/co-parenting-after-divorce/201305/the-impact-parental-alienation-parents>.

<sup>xxxvi</sup> Parental Conflict Alienates, Hurts and Changes Children of Divorce Long-Term, Sedacca, Rosalind, August 2014, available at [http://www.huffingtonpost.com/rosalind-sedacca/parental-conflict-alienat\\_b\\_5688047.html](http://www.huffingtonpost.com/rosalind-sedacca/parental-conflict-alienat_b_5688047.html).

<sup>xxxvii</sup> Id.

<sup>xxxviii</sup> Id.

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