

Comment,  
POST-SEPARATION PARENT-CHILD  
CONTACT PROBLEMS: UNDERSTANDING  
A CHILD'S REJECTION OF A PARENT AND  
INTERVENTIONS BEYOND CUSTODY  
REVERSAL

The relationships within a divorced family are “pitted with emotional intra-family land mines.”<sup>1</sup> Post-parental separation may lead children to resist contact or show a strong preference for one parent. Traditionally, a rejected parent may accuse the favored parent of causing this resistance by alienating the child against them. This allegation could lead to contentious and drawn-out litigation that undercuts parenting plans and reverses custody to the rejected or non-favored parent.<sup>2</sup> This concept of alienation has significantly evolved since its introduction in the 1980s to become a multi-factor theoretical model used to analyze the effects of post-separation stressors on the physical, psychological, and cognitive strengths and vulnerabilities of the child.<sup>3</sup> Courts are called on to consider the unique risks and protective factors for the child and parents on a case-by-case basis. This Comment will describe what parental alienation is and ways courts can address parental alienation to improve the child’s relationship with both parents. Part I of this Comment will define post-separation parent-child contact problems (PCCPs)<sup>4</sup> and their many forms. Part II will explain this concept’s origin and

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<sup>1</sup> See *J.F. v. D.F.*, 61 Misc. 3d 1226(A) (N.Y. Sup. Ct. Dec. 6, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> See generally Marjorie Gans Walters & Steven Friedlander, *When a Child Rejects a Parent: Working with the Intractable Resist/Refuse Dynamic*, 54 FAM. CT. REV. 424, 425 (2016); Janet R. Johnston & Matthew J. Sullivan, *Parental Alienation: In Search of Common Ground for a More Differentiated Theory*, 58 FAM. CT. REV. 270, 279-80 (2020); Kimberley J. Joyce, *Under the Microscope: The Admissibility of Parental Alienation Syndrome*, 32 J. AM. ACAD. MATRIM. LAW. 53, 63 (2019); Shely Polak, Tom Altobelli & Linda Popielarczyk, *Responding to Severe Parent-Child Rejection Cases Without a Parentectomy: A Blended Sequential Intervention Model and the Role of the Courts*, 58 FAM. CT. REV. 507, 509 (2020).

<sup>4</sup> Barbara Jo Fidler & Nicholas Bala, *Concepts, Controversies and Conundrums of “Alienation:” Lessons Learned in a Decade and Reflections on*

the critique of the single factor model of parental alienation as applied in the courtroom. Part III of this Comment will explain how cases involving parent-child contact problems are handled in family law litigation today and the most prominent concerns raised. Part IV will provide potential changes to the way courts handle PCCPs that accommodate the new use of the multi-factor theoretical model of post-separation parent-child contact problems. These potential changes include systemic changes to the case management process as well as therapeutic recommendations that show promise in alleviating post-separation parent-child contact problems.

## **I. Defining Post-Separation Parent-Child Contact Problems**

### *A. Types of Post-Separation Parent-Child Contact Problems*

Post-separation parent-child contact problems result when a child refuses or rejects one of the parents, usually in preference for the other parent; however, identifying PCCPs requires going beyond the simple frustration of a parent's access to his or her child.<sup>5</sup> Contact problems can range on a scale from an affinity for one parent, to alignment with one parent, to realistic estrangement from a parent, to alienation from one parent, or to a hybrid of two or more of these forms of PCCPs.<sup>6</sup> These contact problem categories can vary in intensity from mild or moderate to severe.<sup>7</sup>

An affinity with a preferred parent is quite common in children and can occur for a variety of reasons such as age, gender, religion, common interests, or a prolonged absence from the other parent.<sup>8</sup> Generally, an affinity for one parent does not

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*Challenges Ahead*, 58 FAM. CT. REV. 576, 577 (2020) (hereinafter "Fidler & Bala, *Lessons Learned*").

<sup>5</sup> *J.F.*, 61 Misc. 3d 1226(A).

<sup>6</sup> Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 FAM. CT. REV. 10, 15 (2010) (hereinafter "Fidler & Bala, *Children Resisting*"); Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

<sup>7</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>8</sup> *Id.* at 509; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

amount to the level of parent-child contact problems necessary for court involvement.

Concern starts to mount with parent-child alignments. Alignment can occur before, during, or after separation of the child's parents.<sup>9</sup> Alignment usually arises from a child witnessing a divide growing between the parents and the perceived view that neutrality is not a sustainable option.<sup>10</sup> It is used by the child as a coping mechanism to adjust to the divide between parents, even if those parents are still in a relationship with each other.<sup>11</sup> Alignment can form between a child and one parent for reasons such as "the nonpreferred parent's minimal involvement in parenting, inexperience, or poor parenting, even if those shortcomings do *not* reach the level of abuse or neglect."<sup>12</sup> If alignment occurs during or after separation, it may be due to a parent inviting the child to take his or her side in the separation.<sup>13</sup> A child may align with a parent for separation-specific reasons, such as financial issues, a parent's wish to relocate, or other specific parental-conflicts.<sup>14</sup> Divorce-specific reasons such as a child's resentment of a parent they perceive to have left or hurt the other parent may also inspire a child to align with a parent.<sup>15</sup> Alignment does not include a complete rejection of the non-favored parent; however, alignment may evolve over time into stronger contact problems such as realistic estrangement or alienation.<sup>16</sup>

Parent-child contact problems may also take the form of realistic estrangement. This is a justified rejection of a parent based upon the child's actual negative experiences with that par-

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<sup>9</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15.

<sup>10</sup> Barbara Jo Fidler & Nicholas Bala, *Guest Editors' Introduction to the 2020 Special Issue on Parent-Child Contact Problems: Concepts, Controversies, & Conundrums*, 58 FAM. CT. REV. 265, 265 (2020) (hereinafter "Fidler & Bala, *Introduction to the 2020 Special Issue*"); Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

<sup>11</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

<sup>12</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15 (emphasis in original).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; Gans Walters & Friedlander, *supra* note 3, at 425.

<sup>16</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

ent.<sup>17</sup> For example, the child would be justified for refusing to have contact with a parent if that parent had physically, emotionally, or sexually abused them or neglected to properly care for them.<sup>18</sup> This rejection can also arise from exposure to the parents' intimate partner violence at the hands of the rejected parent.<sup>19</sup> There also may be less objectionable reasons for the child's rejection such as parenting skill deficiencies or conflict with the rejected parent that did not rise to the level of abuse or neglect.<sup>20</sup> The realistic estrangement may intensify in reaction to the child's rejection. Some rejected parents react in a negative manner and counter-reject the child, worsening the estrangement.<sup>21</sup>

Finally, contact problems can manifest as unjustified rejection, which is more commonly known as alienation.<sup>22</sup> Alienation is a child's negative position against a parent that is disproportionate to their own experience with that parent and inconsistent with the previous relationship of the child with that parent.<sup>23</sup> This can result in a rejection, either full or partial, of one parent; superficial or inflated complaints about the rejected parent; and contradictory behaviors or statements regarding the rejected parent.<sup>24</sup> Traditionally, alienation was thought of as a single factor model in which the child's alienation of the rejected parent was the direct and sole result of the favored parent's "campaign of indoctrination of denigration, mistrust, and hate" to accomplish the favored parent's goal of terminating the child's relationship with the other parent.<sup>25</sup> However, it is now understood that denigration may be only one form of parental alienating behavior

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<sup>17</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579.

<sup>18</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 591.

<sup>19</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15, 16; Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265.

<sup>20</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 15, 16; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579, 591.

<sup>21</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 18, 23.

<sup>22</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>23</sup> William Bernet, *Parental Alienation and Misinformation Proliferation*, 58 F.A.M. CT. REV. 293, 294 (2020); Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265; Johnston & Sullivan, *supra* note 3, at 279.

<sup>24</sup> *J.F.*, 61 Misc. 3d 1226(A), n.18.

<sup>25</sup> Johnston & Sullivan, *supra* note 3, at 272.

(PAB) and only one factor in consideration of whether alienation is present.<sup>26</sup>

Today, alienation and other PCCPs are understood to be a result of the child's complex, nuanced, and dynamic experiences with each parent.<sup>27</sup> Not all rejection is alienation.<sup>28</sup> While a favored parent's PABs may be involved, the favored parent's actions that inspire the child's rejection are not the sole factor in finding or treating parent-child contact problems.<sup>29</sup> Therefore, it is likely that contact problems manifest as a hybrid PCCP involving two or more contact problems of affinity, alignment, justified rejection, or unjustified rejection.<sup>30</sup> For instance, a child could have an affinity with a favored parent based on a shared interest while also justifiably rejecting the non-favored parent due to the non-favored parent's poor parenting skills. Another child may justifiably reject a non-favored parent after seeing that parent commit intimate partner violence against the favored parent, while also unjustifiably rejecting the non-favored parent due to the PABs of the favored parent. This complexity is part of what makes these cases so difficult to identify and resolve.

## B. Causes of Parent-Child Contact Problems

Parent-child contact problems usually manifest in high-conflict separation or divorce.<sup>31</sup> In many of these situations, both parents are partially responsible for the child's rejection, whatever type that may be.<sup>32</sup> Although it may be common for

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<sup>26</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 582.

<sup>27</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265; Johnston & Sullivan, *supra* note 3, at 271; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>28</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 578.

<sup>29</sup> See Robin Deutsch, Leslie Drozd, & Chioma Ajoku, *Trauma-Informed Interventions in Parent-Child Contact Problems*, 58 FAM. CT. REV. 470, 471 (2020); Fidler & Bala, *Children Resisting*, *supra* note 6, at 16; Fidler & Bala, *Lessons Learned*, *supra* note 4, at Highlight.

<sup>30</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 578, 579; Johnston & Sullivan, *supra* note 3, at 280; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>31</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265.

<sup>32</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at Highlight. See generally Rebecca Bailey, Deborah Dana, Elizabeth Bailey, & Frank Davis, *The Application of the Polyvagal Theory to High Conflict Co-Parenting Cases*, 58 FAM.

both parents to behave in a way that causes the child's justified or unjustified rejection, not all children exposed to that behavior will respond by rejecting a parent.<sup>33</sup>

Parental alienating behaviors are defined as:

an ongoing pattern of observable negative attitudes, beliefs and behaviors of one parent (or agent) that denigrate, demean, vilify, malign, ridicule, or dismiss the child's other parent. It includes conveying false beliefs or stories to, and withholding positive information from, the child about the other parent together with the relative absence of observable positive attitudes and behaviors (affirming the other parent's love/concern for the child, and the potential to develop and maintain the child's safe, supportive and affectionate relationship with the other parent).<sup>34</sup>

This definition encompasses both verbal and nonverbal actions of the parent, as well as intentional and non-intentional actions and inactions.<sup>35</sup> Examples of PABs include failing to correct the child when they are defiant or disrespectful to or regarding the other parent, allowing the child to control the family's established practices such as parenting schedules, sharing legal or inappropriate information with the child, using the child to deliver messages or spy on the other parent, and withholding affection from the child as punishment for their favorable treatment of the other parent or for not sharing the same opinion as the alienating parent.<sup>36</sup>

A child's reaction to parental alienating behaviors will depend on the child's unique risk, vulnerability, and protective factors.<sup>37</sup> These include age, cognitive capacity, temperament, vulnerability, special needs, and resiliency.<sup>38</sup> Other factors relevant to how a child will be affected by PABs include each parent's parenting style, parenting capacity or skill, beliefs and behaviors, mental health, and personality such as their willing-

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CT. REV. 525, 527 (2020); Michael Saini, *Strengthening Coparenting Relationships to Improve Strained Parent-Child Relationships: A Follow-Up Study of Parents' Experiences of Attending the Overcoming Barriers Program*, 57 FAM. CT. REV. 217, 217 (2019).

<sup>33</sup> Saini, *supra* note 32, at 217.

<sup>34</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 581; Johnston & Sullivan, *supra* note 3, at 283.

<sup>35</sup> Johnston & Sullivan, *supra* note 3, at 283.

<sup>36</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 581-82.

<sup>37</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 513.

<sup>38</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

ness and adaptiveness to change, as well as whether the rejected parent counter-rejects the child.<sup>39</sup> Other factors can include the nature of the parent conflict before and after separation (for example, the presence of intimate partner violence), the ability of the parents to co-parent, poor or conflicting parental communication to the child, the nature of the litigation process, and the exposure and effect of third parties such as extended family and involved professionals.<sup>40</sup>

There are three types of alienating parents. Naïve alienators are passive and sometimes unintentional in their exercise of PABs.<sup>41</sup> They do not act to reinforce the child's relationship with the other parent and occasionally say or do something to promote or reinforce alienation.<sup>42</sup> Active alienators are vulnerable to emotional triggers that result in their PABs.<sup>43</sup> They usually surrender to their feelings of hurt and anger, which result in impulsive alienating behaviors directed at the child that promote or reinforce alienation.<sup>44</sup> The emotional dysregulation active alienators experience prevents them from maintaining a clear focus on the child's needs.<sup>45</sup> Obsessed alienators seek to harm or terminate the child's relationship with the other parent.<sup>46</sup> This is sometimes accompanied by the obsessed alienator's delusion that

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<sup>39</sup> See generally Fidler & Bala, *Children Resisting*, *supra* note 6, at 14; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>40</sup> See generally Fidler & Bala, *Children Resisting*, *supra* note 6, at 14; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 579; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 509.

<sup>41</sup> Douglas Darnall, *Parental Alienation: Not in the Best Interest of the Children*, 75 N.D. L. REV. 323, 327 (1999); Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19.

<sup>42</sup> Darnall, *supra* note 41, at 327; Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19.

<sup>43</sup> Darnall, *supra* note 41, at 327; Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19.

<sup>44</sup> See generally Darnall, *supra* note 41, at 327; Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19; Gans Walters & Friedlander, *supra* note 3, at 426.

<sup>45</sup> Gans Walters & Friedlander, *supra* note 3, at 426.

<sup>46</sup> Darnall, *supra* note 41, at 327; Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19.

the other parent is abusive to the child, when that is not true.<sup>47</sup> An obsessed alienator rarely has the emotional insight or perspective to recognize the harmful effect of PABs on the child.<sup>48</sup> For this reason, obsessed alienators present the most difficult cases for attorneys and judges.<sup>49</sup>

### C. *Significance of Parent-Child Contact Problems*

With the complexity and nuance that parent-child contact problems have, there are several challenges to identifying the type of PCCP that is present. The child and parents must be screened for these considerations prior to significant intervention becoming successful. Absent abuse, neglect, or other danger to the child, it is generally acknowledged that a child benefits from having a relationship with both parents.<sup>50</sup> Therefore, it may still be in the child's best interest to pursue a means to repair the parent-child relationships, even if the relationships start from a place of justified or unjustified rejection.<sup>51</sup> In the case of a parent demonstrating parental alienating behaviors or parenting deficiencies, these can be addressed to repair the child's relationship with the favored and non-favored parent.<sup>52</sup> PCCPs with one child can easily spread to siblings and become more intractable as the problem persists.<sup>53</sup> Therefore, prevention and early intervention are important.

Not addressing parent-child contact problems can have devastating, long-term effects on the emotional well-being of the child. When the parents are engaged in lengthy, high-conflict separations, the child experiences chronic stress and perceived danger that can move the child's emotional responses into a survival state.<sup>54</sup> With parents consumed by their own conflict, it

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<sup>47</sup> Darnall, *supra* note 41, at 327; Gans Walters & Friedlander, *supra* note 3, at 426.

<sup>48</sup> Darnall, *supra* note 41, at 327; Fidler & Bala, *Children Resisting*, *supra* note 6, at 18-19.

<sup>49</sup> Darnall, *supra* note 41, at 317.

<sup>50</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 591; Aaron Robb, *Methodological Challenges in Social Science: Making Sense of Polarized and Competing Research Claims*, 58 FAM. CT. REV. 308, 317 (2020).

<sup>51</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 591.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 583.

<sup>54</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 526.



may appear to the children that no one is caring for them.<sup>55</sup> The children may also internalize their own stress and fear while avoiding their own grief over the separation.<sup>56</sup> Some children may seek to avoid conflict by rejecting one parent while siding with the other. While this tactic may be beneficial to the child in the short term as a coping mechanism, it prevents the child from building adaptive, complex thinking, and problem-solving skills with those they disagree with.<sup>57</sup> The longer this avoidance tactic is used, the more intractable the parties become.<sup>58</sup> These behaviors can impede the child's age-appropriate skill development and result in the child having gaps in emotional maturity when compared to a child of similar age.<sup>59</sup>

Often, parents experiencing contact problems seek resolution through the legal system. This is usually in the form of a request to change custody to the non-favored parent in an initial separation, or a motion to modify a parenting schedule, modify custody, enforce a previously established parenting plan, or find the other parent in contempt. A satisfactory conclusion must go beyond the confines of a legal solution to resolve the underlying conflict problem. To do that, therapeutic orders must be made to address the root cause of the conflict and the parents' contributing behaviors.<sup>60</sup> Even if one parent is entirely responsible for the conflict problem, each parent should be part of the solution to reach a healthy parent-child relationship between both parents and the child as well as a healthy co-parenting relationship.<sup>61</sup>

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<sup>55</sup> *Id.* at 526.

<sup>56</sup> Gans Walters & Friedlander, *supra* note 3, at 425.

<sup>57</sup> *Id.* at 426.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 266.

<sup>61</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 580.

## II. Parent-Child Conflict Problem's Theory Origin and the Origin's Implementation in the Courtroom

### A. *Origin of Parental Alienation and Other Parent-Child Contact Problems*

Parent-child conflict problems, and in particular alienation, is understood to be much more nuanced than what was believed at its inception. The concept of parental alienation was first introduced into the psychological vernacular in the 1980s by psychiatrist, Richard Gardner.<sup>62</sup> He coined the term “parental alienation syndrome” (PAS) to describe the phenomenon he perceived of children involved in custody litigation.<sup>63</sup> In his book, *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse*, he described the pattern of the favored parent alleging in custody litigation that the non-favored parent, usually the father, was sexually abusing the child.<sup>64</sup> According to Gardner, the favored parent would “poison the child’s mind” to convince the child that the non-favored parent had sexually abused them while creating an idolized version of the favored parent in the child’s mind.<sup>65</sup> This brainwashing was done through both intentional and unintentional means until such point that the child believed the sexual abuse had happened.<sup>66</sup> This was a single factor model focused solely on the alienating behaviors of the favored parent and their direct effect on the child that resulted in total rejection of the non-favored parent.<sup>67</sup>

Gardner identified eight characteristics an alienated child will show as part of parental alienation syndrome. These characteristics are:

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<sup>62</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265.

<sup>63</sup> Joyce, *supra* note 3, at 63.

<sup>64</sup> See *J.F.*, 61 Misc. 3d 1226(A), 6; Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265; Joyce, *supra* note 3, at 63.

<sup>65</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265; Joyce, *supra* note 3, at 63.

<sup>66</sup> Joyce, *supra* note 3, at 64.

<sup>67</sup> Johnston & Sullivan, *supra* note 3, at 277.

(1) the child's campaign of denigration against the alienated parent; (2) frivolous rationalizations for the child's criticism of the alienated parent; (3) lack of ambivalence; (4) the independent-thinker phenomenon; (5) reflexive support of the preferred parent against the alienated parent; (6) absence of guilt over exploitation and mistreatment of the alienated parent; (7) borrowed scenarios; and (8) spread of the child's animosity toward the alienated parent's extended family.<sup>68</sup>

## B. Critique of Parental Alienation Syndrome and Its Use in Custody Litigation

Initially, Gardner's theory of parental alienation syndrome was critiqued for a lack of evidence. His book introducing parental alienation syndrome lacked citation to any research studies on the topic.<sup>69</sup> The majority of his evidence for the theory was his personal observations as a child psychiatrist, and his most cited source was himself.<sup>70</sup> Other psychiatrists later built upon Gardner's parental alienation syndrome theory, and today it encompasses much more than Gardner's theory initially did.

Still, parental alienation and other parent-child contact problems lack empirically reliable assessment and research.<sup>71</sup> Despite the past decade of significant advances in understanding the nuances of PCCPs, much more research is needed in regard to diagnosis and intervention.<sup>72</sup> One difficulty in researching PCCPs is that psychologists lack evidence to know the prevalence of these contact problems.<sup>73</sup> Additionally, it is difficult to evaluate a family's contact problems under traditionally reliable assessment tools due to the nature and constant evolution of family relationships.<sup>74</sup> Since each child will react differently to the circumstances they encounter and their own personal risk and protective factors, it is difficult to extrapolate conclusions regarding PCCPs as a whole from the research of a select few chil-

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<sup>68</sup> Bernet, *supra* note 23, at 293-94 (numeric indicators added).

<sup>69</sup> Joyce, *supra* note 3, at 64-65.

<sup>70</sup> Joyce, *supra* note 3, at 64-65.

<sup>71</sup> Saini, *supra* note 32, at 218.

<sup>72</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 578; Saini, *supra* note 32, at 218.

<sup>73</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 11; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 511.

<sup>74</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 511.

dren.<sup>75</sup> This is especially true when studying children of different ages and cultural backgrounds.<sup>76</sup>

The lack of reliable research has led many organizations to reject parental alienation syndrome as a legitimate psychological diagnosis.<sup>77</sup> In 2013, the American Psychiatric Association rejected the inclusion of PAS as a mental disorder and refused to include it in the *Diagnosis and Statistical Manual, Fifth Edition* (DSM-5). However, the DSM-5 does recognize a diagnosis of Parent-Child Relational Problems, Child Affected by Parental Relationship Distress, and Unwarranted Feelings of Estrangement.<sup>78</sup>

For mental health professionals, there is still difficulty in diagnosing and treating parent-child contact problems due to the lack of reliable research available and the nuance involved. A therapist may work with a family regarding a contact problem, but it is difficult to make a diagnosis with objective certainty as to the type and intensity of a PCCP.<sup>79</sup> In the single factor model Gardner initially proposed, it is difficult for a mental health professional to conclude with any amount of certainty that a primary causal relationship exists between a parent's alienating behavior and the subsequent alienated child's rejection of the non-favored parent.<sup>80</sup> To identify such a primary causal relationship, a mental health professional would have to conclude that all other potential factors that could have contributed to the child's rejection of the non-favored parent have been considered, and that those factors were either ruled out or exceeded by the alienating behavior; that the parental alienating behavior began before the child's rejection of the non-favored parent; and that the alienating behavior is directly and empirically the cause of the child's subsequent rejecting behaviors.<sup>81</sup> Essentially, they would have to

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Motion for Leave to Appeal to the New York State Court of Appeals at 31, *E.V. vs. R.V. and G.V.*, No. 2016-02286 & 2016-02287 (N.Y. Mar. 4, 2019).

<sup>78</sup> Stephanie Domitrovich, *The Parental Alienation Controversy, Two Opposing Views*, 54 *JUDGES' J.* 21, Feature (2015); Polak, Altobelli, & Popielarczyk, *supra* note 3, at 511.

<sup>79</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 511.

<sup>80</sup> Johnston & Sullivan, *supra* note 3, at 277.

<sup>81</sup> *Id.*

prove a negative; i.e. that abuse, parenting deficits, and all other factors that could cause a child to reject a parent do not exist or do not affect the child in such a way that would cause rejection.<sup>82</sup>

Gardner's initial research on parental alienation informed how the phenomena of parent-child contact problems has evolved.<sup>83</sup> Today, PCCPs are understood to extend beyond one parent's allegation of sexual abuse and include more than the unjustified rejection of one parent.<sup>84</sup> Gardner's PAS theory has become common knowledge in modern family law litigation, despite the concept of PAS being rejected by all major psychological and psychiatric organizations. Now, the phrase has been shortened to parental alienation to distance itself from the rejected diagnosis of parental alienation syndrome.

### III. Implementation in the Courtroom and Present Concerns

Allegations of parental alienation have become a catch-all claim in custody litigation to include all parent-child contact problems.<sup>85</sup> The term is used imprecisely and beyond its definition of unjustified rejection to encompass all motivations behind a child's rejection of a parent. An allegation of alienation must be considered by the court in its assessment of the best interest of the child and in many states, it has been incorporated by statute as a required consideration for a court's custody determination.<sup>86</sup> For example, most states have codified or have otherwise ex-

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<sup>82</sup> Allison M. Nichols, Note, *Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes*, 112 MICH. L. REV. 663, 277-78 (2014).

<sup>83</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 266.

<sup>84</sup> *J.F.*, 61 Misc. 3d 1226(A) at 6; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 578; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 507.

<sup>85</sup> Motion for Leave to Appeal to the New York State Court of Appeals at 32, *E.V. v. R.V. and G.V.*, No. 2016-02286 & 2016-02287 (N.Y. Mar. 4, 2019).

<sup>86</sup> *J.F.*, 61 Misc. 3d 1226(A) at 6; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 515 (For example, Missouri codified this as a factor to consider in child custody considerations as which parent is more likely to foster the child's "frequent, continuing, and meaningful contact with the other parent." MO. REV. STAT. § 452.375.2(4) (2020). Kansas's iteration of this concept is "the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship be-

pressly promoted a public policy that the state should facilitate a child's relationship with both parents, absent an exigent circumstance that presents a danger to the child.<sup>87</sup> Alienating behaviors are considered a psychological and emotional danger to the child because they attack the central principle that a child benefits from a relationship with both parents; and therefore, a finding of alienation or attempted alienation may result in the reversal of custody to the non-favored parent and termination of contact with the favored parent.<sup>88</sup>

### A. *Allegations of Parental Alienation*

Generally, a custody case involving an allegation of parental alienation is treated similarly to any other contested family law matter. However, parental alienation allegations can cause excessive amounts of litigation and require significant court, expert, and therapeutic resources.<sup>89</sup> These are resources most families and family courts lack.<sup>90</sup> In recent years, courts have responded to these allegations by ordering the child and rejected parent to attend "reintegration" or "reunification" therapy at the family's expense.<sup>91</sup> As a result, the issue of parental alienation is reserved for the families that can afford the gaggle of lawyers, therapists, and expert witnesses necessary to litigate it.<sup>92</sup>

### B. *Reversal of Custody*

When these matters are litigated, the primary resolution requested, other than a generic order for reunification therapy with the child and non-favored parent, is for custody to be awarded to the non-favored parent accompanied with limited or no contact with the favored parent. While there is recognition that reversal

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tween the child and the other parent." KAN. STAT. ANN. § 23-3203(a)(8) (2021)).

<sup>87</sup> Bruce L. Beverly, *A Remedy to Fit the Crime: A Call for the Recognition of the Unreasonable Rejection of a Parent by a Child as Tortious Conduct*, 15 J. L. FAM. STUD. 153, 159 (2013).

<sup>88</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 29; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 508.

<sup>89</sup> *J.F.*, 61 Misc. 3d 1226(A) at 7.

<sup>90</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 508.

<sup>91</sup> *Id.*; Joyce, *supra* note 3, at 54.

<sup>92</sup> Joyce, *supra* note 3, at 54; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 508.

of custody may be the best solution in the most extreme cases of unjustified rejection, the issue is hotly debated.<sup>93</sup> The debate stems from the following questions:

Is it in the child's best interests to be left with a possibly pathologically alienating parent (i.e. thus avoiding the short term risks of separating the child from that parent) at the risk of losing the relationship with the psychologically healthier rejected parent? Or, is it better to foster and protect the relationship with the psychologically healthier rejected parent by transferring custody, thus risking a potentially adverse reaction from the child to the reversal of care?<sup>94</sup>

Advocates for custody reversal contend that leaving the child with the favored parent will cause more harm to the child than the shock of a change of custody. When the favored parent is actively undermining the child's relationship with the other parent, that parent is actively harming the child psychologically and interfering with the child's healthy development.<sup>95</sup> Some psychologists argue that this alienating behavior amounts to emotional abuse of the child, particularly when done maliciously to spite the other parent at the expense of the child's best interest.<sup>96</sup> Although available research is limited, preliminary findings suggests that some children, after an initial adjustment period, feel liberated after custody reversal.<sup>97</sup> When custody reversal is coupled with the child having limited or no contact with the alienating parent, several children reported they did not feel the pressure to resist an attached relationship with the previously rejected parent and could resume a normal relationship without fear of upsetting the previously favored parent.<sup>98</sup> Proponents of custody reversal also reported children easily reverted back to resisting the rejected parent when preparing for or returning from parenting time with the favored parent.<sup>99</sup>

Advocates against custody reversal believe such a remedy is dangerous, unethical, and traumatic for the child.<sup>100</sup> Opponents

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<sup>93</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 29; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 508.

<sup>94</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 516.

<sup>95</sup> Gans Walters & Friedlander, *supra* note 3, at 428.

<sup>96</sup> *Id.*

<sup>97</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 31.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 508.

argue it should be reserved for the most severe cases of true and pervasive unjustified rejection and only for as much time as is necessary to reestablish the child's relationship with the rejected parent.<sup>101</sup> Additionally, opponents contend that the reversal will only serve to further entrench the child's hatred against the rejected parent, add to the child's stress already being experienced due to the separation and litigation, and increase the likelihood the child will engage in dangerous or self-destructive behaviors such as running away or using illegal drug.<sup>102</sup> Also, opponents argue such a custody reversal amounts to a termination of the parent-child relationship with the favored parent, thereby causing the same result and being no better than if the favored parent alienated the child to such an extent as to convince the child to completely reject the other parent.<sup>103</sup> There is also very little available research on the effects of a custody reversal in the long-term.<sup>104</sup> When courts do establish a means for the favored parent to regain contact with the child, such benchmarks are usually vague; i.e. the favored parent may resume parenting time when the rejected parent and child have successfully reunified the parent-child relationship.<sup>105</sup> Such a benchmark can be easily manipulated by the rejected parent in order to prolong the limited or no contact of the favored parent.<sup>106</sup>

### C. *Constitutional Concerns*

Parents have a liberty interest under the Fourteenth Amendment to direct their child's upbringing, which can be affected by the litigation and outcome of parent-child contact problem cases.<sup>107</sup> However, that constitutional right is limited. The law presumes that the parent will act in the child's best interest.<sup>108</sup>

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<sup>101</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 29.

<sup>102</sup> Beverly, *supra* note 87, at 169; Fidler & Bala, *Children Resisting*, *supra* note 6, at 30.

<sup>103</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 30; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 515.

<sup>104</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 31; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 516.

<sup>105</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 516.

<sup>106</sup> *Id.*

<sup>107</sup> *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923); Beverly, *supra* note 87, at 157.

<sup>108</sup> *Parham v. J.R.*, 442 U.S. 584, 602 (1979); Beverly, *supra* note 87, at 157.



The state may intervene, acting in *parens patriae*, to protect the child's interests when there are legitimate concerns that challenge that parental presumption.<sup>109</sup> Due process gives people a means to protect their rights, such as the right to direct their child's upbringing. Due process requires that a state provide meaningful standards to apply its laws.<sup>110</sup> The purpose of due process is to ensure ordinary people can understand what the law prohibits and to prevent the law from being applied discriminatorily or arbitrarily.<sup>111</sup>

One of the difficulties that arises in parental alienation cases is the lack of a meaningful definition of what parental alienation is. Mental health professionals continue to wrestle with the concept within their profession and have difficulty in conducting reliable studies on the matter. Even the diagnosis of parent-child conflict problem types eludes professionals trained to identify the signs. In the courtroom, the term "parental alienation" is used imprecisely to refer to a variety of conflict problems. Once raised, the term is so vague that the protesting party may have no meaningful definition or content from which to prove their claim.<sup>112</sup> Conversely, the alleged alienating parent has no meaningful definition to try and disprove the claim.<sup>113</sup> Some argue this may be in direct contravention of due process protections and parental rights when a finding of parental alienation is a legal basis for changing custody.<sup>114</sup>

#### D. *Gender-Specific Criticisms of the Use of Parental Alienation Claims in Litigation*

While the concept of parental alienation was inspired by allegations of sexual abuse by mothers against fathers, it is well established today that both mothers and fathers may become vic-

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<sup>109</sup> *Bellotti v. Baird*, 443 U.S. 622 (1979); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Prince v. Mass.*, 321 U.S. 158 (1944); *Parham*, 442 U.S. 584; *Beverly*, *supra* note 87, at 157.

<sup>110</sup> *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 44 (1991) (O'Connor, J., dissenting).

<sup>111</sup> *Kolender v. Lawson*, 461 U.S. 352, 257 (1983).

<sup>112</sup> Motion for Leave to Appeal to the New York State Court of Appeals at 32, *E.V. v. R.V. and G.V.*, No. 2016-02286 & 2016-02287 (N.Y. Mar. 4, 2019).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

tims of alienation.<sup>115</sup> Feminist and men's rights activists argue that alienation claims present biases and propagate lies helping or harming their prospective groups. Feminists dismiss most, if not all, allegations of parental alienation by fathers as fabrications by perpetrators of intimate partner violence or abusive fathers as a means of using the legal system to further exert control over the family and abuse the child, who justifiably resists contact due to the abuse.<sup>116</sup> Therefore, they argue that findings of alienation against mothers further victimizes them and endangers children.<sup>117</sup> Conversely, men's rights activists assert that family courts are gender-biased against fathers.<sup>118</sup> Therefore, they contend that men's alienation claims are not considered seriously by the court, even though mothers may be alienating children against fathers as a means to incite revenge for the separation.<sup>119</sup>

#### **IV. Potential Improvements to Litigation of Cases with Parent-Child Contact Problems**

When courts are presented with parental alienation allegations, the litigation quickly devolves into the search for fault.<sup>120</sup> In making an alienation allegation, a disgruntled parent directs the blame and generally avoids accountability for any of their own actions that could have caused the child to reject them.<sup>121</sup> The court is then tasked with finding a causal connection between the parents' behaviors and the child's rejection.<sup>122</sup> While such cause is an important one to address, it is difficult for a judge to assess when the interested parties are the ones responsi-

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<sup>115</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 265.

<sup>116</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 10; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 591; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 511.

<sup>117</sup> Fidler & Bala, *Introduction to the 2020 Special Issue*, *supra* note 10, at 266; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 591.

<sup>118</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 510-11.

<sup>119</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 10.

<sup>120</sup> Lyn R. Greenberg & Robert A. Schnider, *We're Still Taking X-Rays but the Patient Is Dying: What Keeps Us from Intervening More Quickly in Resist-Refuse Cases?*, 58 *FAM. CT. REV.* 488, 490 (2020).

<sup>121</sup> Joyce, *supra* note 3, at 54-55.

<sup>122</sup> *Id.*

ble for presenting the judge with evidence.<sup>123</sup> The critical focus must be shifted from pinpointing fault to identifying solutions that will be in the best interest of the child.<sup>124</sup> Below are several suggestions of how the courts, litigation process, and therapeutic services can better assist families with parent-child contact problems.

#### A. Recognition and Early Intervention

Parent-child contact problems can become intractable if not swiftly addressed.<sup>125</sup> Mental health professionals lament that delays in therapeutic intervention allow the family dynamics to become entrenched.<sup>126</sup> The child and parents can become so committed to their dysfunction that when interventions are imposed, it is difficult or impossible to meaningfully ameliorate the contact problem, which causes long term impact on the family and the child's ability to develop emotionally.<sup>127</sup> Early intervention with these families with contact problems is key to resolving the dysfunction.

People need to be able to recognize the signs of a child's resistance or refusal to a parent and direct them to appropriate interventions.<sup>128</sup> This includes all professionals that come into regular contact with parents and children, as well as the public at large.<sup>129</sup> For the public, more education must be done in defining what parental alienation is, as well as its harmful long-term effects on children.<sup>130</sup> This can be in the form of public education campaigns and relationship education in schools.<sup>131</sup> Education

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<sup>123</sup> *Id.*

<sup>124</sup> Greenberg & Schnider, *supra* note 120, at 490.

<sup>125</sup> Gans Walters & Friedlander, *supra* note 3, at 424.

<sup>126</sup> Greenberg & Schnider, *supra* note 120, at Highlight; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 512.

<sup>127</sup> Greenberg & Schnider, *supra* note 120, at Highlight; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 512.

<sup>128</sup> Philip Marcus, *Innovative Systemic Response: Innovative Programs in Israel for Prevention & Responding to Parental Alienation: Education, Early Identification and Timely, Effective Intervention*, 58 FAM. CT. REV. 544, 547 (2020).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 545-46.

<sup>131</sup> *Id.* at 546-47.

can be a powerful tool in preventing alienating behaviors from arising, thereby curbing instances of entrenched PCCPs.<sup>132</sup>

Mental health professionals, lawyers, and judges need initial and continuing professional education on parent-child contact problems.<sup>133</sup> In particular, this education should be cross-disciplinary to incorporate both mental health and legal aspects of the rejection dynamics so that professionals from both industries can be aware of the considerations of the other.<sup>134</sup> Due to the preliminary nature of available research, both professions need to further develop best practice guidelines with regard to contact problem families.<sup>135</sup> With this education, lawyers would be more equipped to counsel their clients regarding the dangers of continued conflict.<sup>136</sup> Judges would be more capable of identifying these dynamics within cases, even if alienation or other contact problems are not specifically alleged.<sup>137</sup> With more education, judges would also be able to tailor better court orders to intervene in contact problem dynamics.<sup>138</sup> These orders can include sending families to well-established and customized therapies designed specifically for families with PCCPs. These therapy models are discussed more thoroughly later in this Comment.

## B. *Modified Case Management*

### 1. *The Judge*

Parent-child contact problem cases are complex; thus, they benefit from a single judge that continues to address them throughout the pendency of the litigation.<sup>139</sup> By having a constant figure, intricate details will not easily be lost from hearing to hearing. One judge will be better able to serve the family as an authoritative figure to educate parents on the seriousness of

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<sup>132</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 35; Marcus, *supra* note 128, at 545.

<sup>133</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 35.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 590; Marcus, *supra* note 128, at 547.

<sup>137</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 589.

<sup>138</sup> *Id.*

<sup>139</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 28; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 589.

alienating behaviors and outline clear expectations and consequences if they choose to violate court orders.<sup>140</sup>

Once judges are educated on the dynamics involved in these families, they can notice the indicators of contact problems before specific allegations of parental alienation arise.<sup>141</sup> Once alienation claims arise, judges that understand the nuance of parent-child contact problems may know to ask the parties specific questions during hearings.<sup>142</sup> For example, if a parent accuses the other of alienating the child, a judge can ask that parent, “how have you tried to resolve the conflict between you and your child?” to assess the motivation behind the accusation and that parent’s willingness to engage in certain services.<sup>143</sup>

Judges can also impose guidelines specifically for case management of families with parent-child contact problems. If a parent raises an accusation of alienation, a judge can impose rules in the courtroom that prioritize scheduling deadlines and hearings within a short period of days to address the claim.<sup>144</sup> By doing so, the judge can address the contact problem before the dynamics become entrenched by drastically shortening the time between the first allegation and any court order.<sup>145</sup> Judges can impose a zero-tolerance policy once alienation claims arise regarding any requests for delays on filing due dates and hearings out of the knowledge that delaying proceedings for these families is not in the best interest of the child.<sup>146</sup>

## 2. *The Courts’ Orders*

### a. *Content of Court Orders for Families with Parent-Child Contact Problems*

Due to the complex, nuanced circumstances of each family with parent-child contact problems, court orders need to be carefully tailored to address the unique dynamics of each case.<sup>147</sup> To

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<sup>140</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 28.

<sup>141</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 589; Greenberg & Schnider, *supra* note 120, at 492.

<sup>142</sup> Greenberg & Schnider, *supra* note 120, at 492.

<sup>143</sup> *Id.*

<sup>144</sup> Marcus, *supra* note 128, at 551.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 550.

address the contact problem, court orders should direct families to participate in therapeutic interventions, as well as address the standard topics such as parenting time schedules and parental communication.<sup>148</sup> These orders must be detailed and unambiguous.<sup>149</sup> This will avoid manipulative or conflict-eager parents using confusing or vague court orders to further entrench conflict or avoid the court's desired intent.<sup>150</sup>

Vital details of a comprehensive parenting plan such as a parenting time schedule, child exchange times and locations, transportation, parental communication, parental decision-making, and information sharing should be included in any temporary or interim court order.<sup>151</sup> By including thorough details from the beginning, the court can effectively disengage the parties from further conflict and order the parents to conduct parallel co-parenting during the pendency of the litigation.<sup>152</sup>

Families with parent-child contact problems should be directed to therapeutic intervention by court order.<sup>153</sup> Court orders directing families to these interventions should include details such as the name, address, and contact information for the provider(s) they should see.<sup>154</sup> Thorough orders will also include the court's expectation of which family members will participate and the mechanism or schedule for reporting progress back to the court.<sup>155</sup> Orders should also state how the services will be paid for, by whom, and by when, as well as consequences if a party fails to pay pursuant to the court order.<sup>156</sup> Less tangible factors that should be addressed in the court order are the goals of the intervention (for instance, improve the child's relationship with both parents or recognize and stop alienating behaviors by a

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<sup>148</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37.

<sup>149</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 589.

<sup>150</sup> *Id.*

<sup>151</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37.

<sup>152</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 589.

<sup>153</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37; Gans Walters & Friedlander, *supra* note 3, at 433.

<sup>154</sup> Gans Walters & Friedlander, *supra* note 3, at 433. *See generally* Darnall, *supra* note 41, at 359.

<sup>155</sup> Darnall, *supra* note 41, at 359.

<sup>156</sup> Darnall, *supra* note 41, at 359; Greenberg & Schnider, *supra* note 120, at 500.

parent), and the court's role in monitoring and enforcing the family's meaningful participation in the ordered services.<sup>157</sup>

Through its orders, the court can specifically establish its expectations for the parties' behaviors. For example, it is common for orders to include an anti-alienation provision due to the frequency of unspecific claims of alienation in litigation.<sup>158</sup> These provisions prohibit both parties from disparaging the other parent or discussing the litigation with the child.<sup>159</sup> Having these provisions in place is a good first step in establishing expectations for parental behavior; however, these provisions are largely insufficient to prevent or address the issue and are difficult to enforce.<sup>160</sup> This language could be improved by adding an affirmative duty to the parents to prevent the child from observing conflict between the parents, or being exposed to other people who will disparage the other parent to the child.<sup>161</sup> Other mechanisms, such as the use of OurFamilyWizard or AppClose (messaging tools designed for separated parents to communicate and share information) can be ordered to monitor and enforce this affirmative duty by reducing the need for the parents to communicate in front of the child.<sup>162</sup>

Another requirement the court can set by court order specifically to avoid or aid parent-child contact problems is an order directing the child and both parents to meaningfully participate in therapeutic services. As will be discussed later in this Comment, it is vital that the child and both parents participate in therapeutic services.<sup>163</sup> In some cases, the child or parents may withhold or refuse to meaningfully take part in therapy sessions. The court's authority serves to counteract potential resistance that is found in many family members experiencing PCCPs.<sup>164</sup>

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<sup>157</sup> Gans Walters & Friedlander, *supra* note 3, at 433.

<sup>158</sup> Beverly, *supra* note 87, at 166-67; Greenberg & Schnider, *supra* note 120, at 501.

<sup>159</sup> Beverly, *supra* note 87, at 166-67; Greenberg & Schnider, *supra* note 120, at 501.

<sup>160</sup> Beverly, *supra* note 87, at 166-67; Greenberg & Schnider, *supra* note 120, at 501.

<sup>161</sup> Greenberg & Schnider, *supra* note 120, at 501.

<sup>162</sup> *Id.*

<sup>163</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533; Fidler & Bala, *Children Resisting*, *supra* note 6, at 25, 26-27.

<sup>164</sup> Gans Walters & Friedlander, *supra* note 3, at 433.

The court may further try to avoid resistance by placing an affirmative duty on the parents to take the child to every appointment and promote the child's cooperation with therapeutic services or parenting schedule transitions.<sup>165</sup> This should also be accompanied with specific sanctions or other consequences if the parents do not satisfy those obligations.<sup>166</sup>

Not all alienating behaviors can be prohibited through a court order. For example, a parent may exhibit tears or tell the child they will miss them before exchanging the child to the other parent. These behaviors may garner a strong emotional response from the child, leading to the child resenting the other parent and wishing they were with the emotional parent. While these behaviors by the parent may be alienating, it would be problematic for the court to prohibit them.<sup>167</sup> This makes the judge's authority as an educational source for parents all that more important. A judge can serve as an authority figure to explain to parents the dangers of parent-child contact problems. Through this education, some parents can be conscious of the subtle behaviors that the court cannot regulate by court order and hopefully prevent these behaviors themselves.<sup>168</sup>

One critical issue that must be addressed in effective court orders for families with parent-child contact problems is the information-sharing between the court and therapeutic services. The judge must have access to necessary information that only the therapist can convey.<sup>169</sup> This communication can also include information-sharing between the attorneys and therapist, with established parameters in the court order regarding limitations on one-on-one communication between the therapist and one party's lawyer, just as there are limitations on communication between one party's lawyer and the court.<sup>170</sup> The form and frequency of the communication between the therapist, judge, and attorneys can be outlined in the court order. For example, the

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<sup>165</sup> Greenberg & Schnider, *supra* note 120, at 501.

<sup>166</sup> Gans Walters & Friedlander, *supra* note 3, at 433-34; Greenberg & Schnider, *supra* note 120, at 501.

<sup>167</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37; Greenberg & Schnider, *supra* note 120, at 501.

<sup>168</sup> Greenberg & Schnider, *supra* note 120, at 501.

<sup>169</sup> *Id.* at 500.

<sup>170</sup> Gans Walters & Friedlander, *supra* note 3, at 435.



therapist may appear to testify in hearings or case management conferences held every sixty days or may have joint telephone conferences with the attorneys monthly.<sup>171</sup>

Court orders should specify the type of information being sought from the therapist. The information conveyed between the therapist and the court must be broad enough to enable the court to address the needs of the parties while being tailored enough to avoid inappropriate disclosures.<sup>172</sup> The information described in the court order should include whether the family members are attending appointments on time, cooperating with the therapist, and meaningfully engaging in the treatment program.<sup>173</sup> Other disclosures may include a provision addressing the situation where the therapist is obligated by ethical and professional standards to terminate treating an individual for any reason. This can happen based upon the dynamics the therapist notices during treatment. For example, a therapist may decide to terminate joint therapy between a parent and child if it is later disclosed that the parent is abusing the child and such joint therapy is harmful to the child's emotional wellbeing.<sup>174</sup> Another reason a therapist may terminate treatment is that the contact problem dynamics are so entrenched that it is reasonably clear to the therapist in his or her professional assessment that therapy will not accomplish its goals.<sup>175</sup> The nature of these disclosures still protects the privacy of the therapy because little to no specific or substantive detail is needed by the court.<sup>176</sup> The court needs this general information in order to monitor the cooperation of the parties, which ultimately affects the court's analysis of the best interest of the child.<sup>177</sup>

Court orders should also reflect accountability of the parties and the court's power to enforce the order.<sup>178</sup> The court should schedule review hearings at particular intervals from the outset

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<sup>171</sup> *Id.* at 435; Greenberg & Schnider, *supra* note 120, at 501.

<sup>172</sup> Gans Walters & Friedlander, *supra* note 3, at 435.

<sup>173</sup> *Id.* at 434, 437.

<sup>174</sup> Richard A. Warshak, *Professional Role: Risks and Realities of Working with Alienated Children*, 58 FAM. CT. REV. 432, 440 (2020).

<sup>175</sup> *Id.*

<sup>176</sup> Gans Walters & Friedlander, *supra* note 3, at 434, 437.

<sup>177</sup> *Id.* at 434.

<sup>178</sup> *Id.*

of any order for therapeutic services.<sup>179</sup> The court can request written or oral communication with the therapist before or during the hearing.<sup>180</sup> PCCP families have a tendency to need frequent court hearings.<sup>181</sup> The pre-scheduled review hearings allow the court to provide timely resolution if the therapist reports any concerns that require the court's interjection or if the parties have any concerns they would like to raise to the court.<sup>182</sup> If no new issues have arisen, the hearing date can be canceled.<sup>183</sup>

Court orders must be sufficiently detailed to address the complex dynamics present in PCCP families. Court orders, especially those on an interim or temporary basis, must include comprehensive parenting plans to limit conflict and direct coparenting during litigation. They must also include directions to seek out therapeutic services, and outline the people, goals, and expectations for participation in therapy. Court orders must also define the expectations the court has for parental behavior. That includes creating an affirmative duty for parents to cooperate with the court order and identifying consequences for any failure to comply. Court orders must also describe the information that will be shared with the court from the family's therapist. The information described must be sufficient for the court to monitor each party's compliance so that it may analyze the best interests of the child. To enforce the court's order, court orders should include pre-scheduled review hearings to monitor and address any new or continuing issues.

b. *Timing of Court Orders for Families with Parent-Child Contact Problems*

Meaningful, long-term change to contact problem dynamics require the court's ongoing monitoring and oversight.<sup>184</sup> During the pendency of litigation, it is tempting for the court to follow its usual procedure, collect all the evidence, and make a thoroughly

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 435.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 429.

considered decision.<sup>185</sup> However, with PCCP families, collecting all the evidence takes months that only cause more intractability and entrenchment between the family members.<sup>186</sup> Instead, when parent-child contact problems are suspected or alleged, the family should immediately be ordered to take part in a risk assessment or other form of screening for PCCPs.<sup>187</sup> If that assessment indicates contact problem issues, the family should immediately be ordered, while the case is still pending, to participate in therapeutic services.<sup>188</sup> It is recommended that the court defer making final orders until therapeutic services have been attempted and the results have been analyzed.<sup>189</sup>

While no child-centered orders are truly “final,” children benefit from finalized litigation.<sup>190</sup> Judicial orders should aim to promote enforcement and minimize potential for modifications.<sup>191</sup> Therefore, if judicial orders will require contingent actions to modify custody or visitation, the court should make this order as part of an interim order rather than part of its final orders. For example, if the court orders that the favored parent can resume parenting time with the child upon completion of a psychoeducation or therapy program, the court should make this part of an interim order so that it can provide better oversight, rather than a final order where the court is not monitoring the progress.<sup>192</sup>

With some intractable cases of PCCP, noncompliance with the court order is a significant issue that continues from interim to final order.<sup>193</sup> When noncompliance is a recurring issue, the court should stop waiting for the family member to satisfy the contingency described in the interim order.<sup>194</sup> The best interest of the child is not served by continual delay by a parent that demonstrates an unwillingness to act in their child’s best inter-

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<sup>185</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 28; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 584.

<sup>186</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 584.

<sup>187</sup> *Id.* at 589.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 517.

<sup>191</sup> Greenberg & Schnider, *supra* note 120, at 500.

<sup>192</sup> *Id.*

<sup>193</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 37.

<sup>194</sup> *See generally* Polak, Altobelli, & Popielarczyk, *supra* note 3, at 517.

est.<sup>195</sup> It is in these situations that a court should order a reversal of custody as a final order, with potential for modification if there is a change of circumstances in the future.

### C. *Lawyers Involved in Representing a Party with Parent-Child Contact Problems*

Lawyers that engage in family law-based representation need to educate themselves on parent-child contact problems.<sup>196</sup> This includes understanding children's developmental needs and recognizing the signs of PCCPs in parents and children.<sup>197</sup> This will better enable lawyers to make strategic and tactical decisions in litigation and provide better advice for their clients, such as the recommendation of a therapist known to be effective with PCCP families.<sup>198</sup>

Lawyers with a thorough understanding of PCCPs will be able to recognize the possibility that their client may be a perpetrator or victim of alienating behaviors.<sup>199</sup> With this comes the responsibility to educate clients on the alienating behaviors and how they are harmful to the child.<sup>200</sup> If the client is suspected of committing alienating behaviors, it is imperative that the lawyer warns the parent of the potential harm to the child and the potential legal consequences for such behavior including the risk of losing custody and contact with the child.<sup>201</sup> When parents understand the legal consequences they face, they are more likely to respond to education and other interventions.<sup>202</sup> Convincing a client that his or her conduct may be harming their child can be a difficult task, especially if the client is an obsessed alienator who is committed to the idea that the other parent is more harmful to the child.<sup>203</sup> Despite this difficulty, lawyers must give their client this education pursuant to their ethical duties and with the hope

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<sup>195</sup> *Id.*

<sup>196</sup> Greenberg & Schnider, *supra* note 120, at 493.

<sup>197</sup> *Id.*; Marcus, *supra* note 128, at 551.

<sup>198</sup> Greenberg & Schnider, *supra* note 120, at 493.

<sup>199</sup> Marcus, *supra* note 128, at 550.

<sup>200</sup> Darnall, *supra* note 41, at 324; Gans Walters & Friedlander, *supra* note 3, at 438.

<sup>201</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 588-89; Gans Walters & Friedlander, *supra* note 3, at 438; Marcus, *supra* note 128, at 551.

<sup>202</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 588-89.

<sup>203</sup> Gans Walters & Friedlander, *supra* note 3, at 438.

that the more self-aware clients will change their behavior to promote the best interests of the child and work together with the other parent.<sup>204</sup>

Lawyers also need to understand the complexities of PCCPs so they can be better advocates in the courtroom. Lawyers must place relevant research material and case information before the court.<sup>205</sup> It is critical that lawyers convey to the court that an allegation of unjust rejection is more than a parent trying to establish fault with the other parent.<sup>206</sup> It is a theory of cause and effect between parental conduct or a child's other experiences and the child's rejection of a parent that negatively impacts the child for years and gives rise to concerns of parental unfitness and child abuse.<sup>207</sup>

Judges rule on issues with the information that is brought before them; therefore, it is a lawyer's duty to present the court with relevant information about PCCPs, childhood development, and a holistic view of the child's life.<sup>208</sup> To truly understand the purpose of a child's resistance against one parent, the court must have an understanding of all of the child's experiences with both parents, as well as the child's daily life and activities.<sup>209</sup> Absent a risk assessment or therapeutic screening, it is the court's responsibility to determine if the child's rejection of a parent is unjust due to parental alienating behaviors, which could be intentional or unintentional, or a justified rejection due to the child's experiences with a parent. Not presenting this "mundane" information to the court may prevent critical information related to the parent-child contact problem from ever being considered by the court.<sup>210</sup>

Lawyers must also be aware of their ethical duty to faithfully represent their client's interests.<sup>211</sup> Some lawyers interpret their duty to solely advocate for the parent and in doing so, exacerbate

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<sup>204</sup> Darnall, *supra* note 41, at 324; Gans Walters & Friedlander, *supra* note 3, at 438.

<sup>205</sup> Marcus, *supra* note 128, at 551. *See generally* Greenberg & Schnider, *supra* note 120, at 498.

<sup>206</sup> Joyce, *supra* note 3, at 63, 67.

<sup>207</sup> *Id.* at 67.

<sup>208</sup> Greenberg & Schnider, *supra* note 120, at 497, 498.

<sup>209</sup> *Id.* at 498-499.

<sup>210</sup> *Id.* at 497.

<sup>211</sup> *Id.* at 492-93.

the PCCP tensions by ignoring the potential harm their clients could be doing.<sup>212</sup> Conversely, some lawyers interpret their ethical duty to also pursue the best interest of their client's child; however, it is possible in PCCP cases that the client and child's interests may conflict.<sup>213</sup> A parent-client may insist that his or her attorney refuse to cooperate or compromise with the other parent or continue to engage in alienating behaviors despite the lawyer's warnings.<sup>214</sup> A lawyer in this position may request interim orders from the court to protect the child such as injunctive relief, therapeutic intervention, instructional intervention, psychoeducation, or the appointment of a guardian ad litem to protect the child's interests.<sup>215</sup> In some limited circumstances, the lawyer could move to withdraw from representation; however, this is not always available and does nothing to protect the best interests of the child.<sup>216</sup>

#### D. *Therapeutic Interventions for Families with Parent-Child Contact Problems*

No single type of therapeutic intervention has emerged as the most effective in resolving parent-child contact problems.<sup>217</sup> From the available research, it appears PCCP families benefit most when both parents and the child participate in therapy.<sup>218</sup> This therapy treats the family as a "system" of interworking members and recognizes that "actions by any individual family member will influence all the others in the family, and their reactions will have a reciprocal effect on the individual."<sup>219</sup> Family system-based therapy is conducted in various combinations so each person participates in individual therapy, in dyads (i.e. parent-parent; parent-child), and in whole-group therapy with both parents and the child.<sup>220</sup> Therapy may also necessitate the inclu-

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<sup>212</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 590.

<sup>213</sup> Gans Walters & Friedlander, *supra* note 3, at 438; Marcus, *supra* note 128, at 551.

<sup>214</sup> Greenberg & Schnider, *supra* note 120, at 493; Marcus, *supra* note 128, at 551.

<sup>215</sup> Darnall, *supra* note 41, at 328; Marcus, *supra* note 128, at 551.

<sup>216</sup> Marcus, *supra* note 128, at 551.

<sup>217</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 529.

<sup>218</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 586.

<sup>219</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533.

<sup>220</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 25.

sion of other people such as step-parents, siblings, or grandparents in order to address root issues involved in PCCPs.<sup>221</sup>

In these therapy sessions, various approaches may be used to address the issues and help the child adjust to a world-view without rejection.<sup>222</sup> Therapy approaches that have been successfully used with PCCPs include “psychoeducation, cognitive-behavioral, systematic desensitization, solution-focused, narrative, motivational interviewing, skills-based education, experiential, recreational, and animal/equine-assisted.”<sup>223</sup> There are intensive family therapy programs designed specifically to address parent-child contact problems. These programs, like Overcoming Barriers and Family Bridges, involve a multi-day workshop structured with recreational and therapeutic activities.<sup>224</sup> For example, Overcoming Barriers is a summer camp-like program that combines traditional recreational camp experiences like hiking, crafts, and campfires, with periods of psychoeducation and clinical therapy sessions.<sup>225</sup> After the intensive, multi-day workshop, participants follow an after care plan that includes routine clinical therapy sessions as a maintenance tool to the benefits of the workshop.<sup>226</sup>

Therapists must learn to overcome resistance from families with PCCPs. Therapists treating these families can overcome resistance through specialized understanding and experience with treating families with high levels of conflict.<sup>227</sup> From the available research, it appears interventions with PCCP families are most likely to be effective when they involve mental health treatment along with legal authority to reduce resistance.<sup>228</sup> Another key way to avoid resistance by some participants is the use of a treatment team, rather than a single therapist to treat all individ-

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<sup>221</sup> *Id.*

<sup>222</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 585.

<sup>223</sup> *Id.*

<sup>224</sup> Saini, *supra* note 32; Warshak, *supra* note 174.

<sup>225</sup> Saini, *supra* note 32, at 219, 220.

<sup>226</sup> *Id.* at 227.

<sup>227</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533.

<sup>228</sup> Steven Demby, *Interparental Hatred: Commentary on Entrenched Post-separation Parenting Disputes: The Role of Interparental Hatred*, 55 FAM. CT. REV. 417, 422 (2017).

uals.<sup>229</sup> The use of a separate therapist for each person avoids any feeling by a patient that the therapist is biased against them or favors another patient, which is a common accusation hurled against therapists that have multiple patients within one family.<sup>230</sup>

The goal of therapy with families suffering with parent-child contact problems is not to find blame or fault anyone for why the child has rejected a parent.<sup>231</sup> The goal is also not to simply “re-unify” the child with the rejected parent.<sup>232</sup> Rather, the goal of the family-system approach is to facilitate globally “healthy child adjustment and coping mechanisms. This includes correcting the child’s distorted and polarized views and replacing them with more realistic views of each parent, improving the child’s healthy relationships with *both* parents, addressing divorce-related stress, boundaries and age-appropriate autonomy and restoring adequate parenting, co-parenting and parent—child roles,” irrespective of the cause of the contact problem.<sup>233</sup> With this goal, therapy assists the family to recover healthy family function, as well as repair the individual relationships between the child with both parents and also create a healthy co-parenting relationship.<sup>234</sup>

One of the biggest hurdles for families is the cost of these services. PCCP families are usually involved in extensive litigation that consumes family resources.<sup>235</sup> The cost of therapeutic services in most jurisdictions are assessed against the parties.<sup>236</sup> While some families would benefit from a multi-day workshop, multi-member therapy team, and therapy for all family members,

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<sup>229</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533; Fidler & Bala, *Children Resisting*, *supra* note 6, at 25; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 585-86.

<sup>230</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 529; Darnall, *supra* note 41, at 328; Fidler & Bala, *Children Resisting*, *supra* note 6, at 25-26.

<sup>231</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 580.

<sup>232</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 26-27.

<sup>233</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 26-27; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 580 (emphasis in original).

<sup>234</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533.

<sup>235</sup> Darnall, *supra* note 41, at 358.

<sup>236</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 586.



these services are too costly for many PCCP families who need them.<sup>237</sup>

Little empirical data is available about the application and success of various therapeutic models for PCCP families for several reasons. The factors that can contribute to parent-child contact problems are so numerous, and the conflicts themselves can be so dynamic, that it is difficult for meticulous and comprehensive data to be collected.<sup>238</sup> Each major study conducted as of now has used different research designs and models, and defined a therapeutic model's success differently.<sup>239</sup> For example, one study may measure its successful outcome as a reduction in alienating behaviors, an improved co-parenting relationship, or the child's self-reported experience in closeness to the previously rejected parent.<sup>240</sup> This lack of consistency in the measure of success across different studies makes these results difficult to compare.<sup>241</sup> With the differences in methodology along with the understanding that each PCCP dynamic is case-specific, it is difficult to extrapolate one theory or therapeutic intervention that will be helpful in treating other PCCP cases.<sup>242</sup> Ultimately, further and better research is needed to evaluate the application and success of therapeutic models with families with parent-child contact problems.<sup>243</sup>

#### E. Custody Reversal as an Outcome for Families with Parent-Child Contact Problems

In the most severe cases of parent-child contact problems, the above described legal and therapeutic interventions are unlikely to be effective.<sup>244</sup> These usually involve unjustified rejection of a parent where the favored parent has continued pervasive parental alienating behaviors.<sup>245</sup> All available data in-

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<sup>237</sup> Fidler & Bala, *Children Resisting*, *supra* note 6, at 38; Johnston & Sullivan, *supra* note 3, at 282.

<sup>238</sup> Johnston & Sullivan, *supra* note 3, at 282.

<sup>239</sup> Saini, *supra* note 32, at 218-19.

<sup>240</sup> *Id.*

<sup>241</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 593; Saini, *supra* note 32, at 219.

<sup>242</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 593.

<sup>243</sup> Bailey, Dana, Bailey, & Davis, *supra* note 32, at 537.

<sup>244</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 586.

<sup>245</sup> *Id.*

dicade that therapeutic interventions will not be successful at restoring healthy global relationships within the family if the child remains in the custody or in contact with a pervasively alienating parent.<sup>246</sup> Meaningful contact with the rejected parent is essential to any healthy resolution of the parent-child relationship.<sup>247</sup> Custody reversal is a blunt instrument, but the court must use such a remedy at times where the child is continually exposed to emotional abuse, especially when the rejected parent is able to care for and shield the child from the ongoing abuse.<sup>248</sup>

These severe cases of pervasive parental alienating behaviors are often characterized as emotionally abusive situations for the child; therefore, it is recommended that the rejected parent be awarded sole custody of the child and for the favored parent's contact with the child to be suspended, at least on a temporary basis.<sup>249</sup> This custody order is usually combined with additional orders for therapeutic interventions in which the child and rejected parent participate in joint sessions while the favored parent participates in individual therapy aimed at preventing future alienating behavior.<sup>250</sup> Unfortunately, it is unlikely the favored parent will meaningfully participate in therapeutic services once custody has been reversed because that parent is so deeply committed to the conflict that they have continued the alienating behaviors despite all other previous interventions.<sup>251</sup> It has been recommended that this custody reversal and contact suspension be reviewable after ninety days.<sup>252</sup>

## V Conclusion

Post-separation parent-child contact problems are complex, nuanced, and dynamic. There are several types of PCCPs caused by a variety of reasons that are difficult to identify. If not addressed early, contact problems can cause long-term harm to a child's emotional development and parent-child relationships.

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<sup>246</sup> Warshak, *supra* note 174, at 438.

<sup>247</sup> *Id.*

<sup>248</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 514.

<sup>249</sup> Fidler & Bala, *Lessons Learned*, *supra* note 4, at 586; Polak, Altobelli, & Popielarczyk, *supra* note 3, at 515.

<sup>250</sup> Polak, Altobelli, & Popielarczyk, *supra* note 3, at 515.

<sup>251</sup> *Id.* at 514.

<sup>252</sup> *Id.* at 515.

Although the concept first arose with a narrow focus on a favored parent's alienating behavior, PCCPs are understood today to be a multi-factor analysis and highly specific to the circumstances of each case. Even though the concept of parent-child contact problems has evolved over time, their use in the courtroom is still controversial. Since the understanding of contact problems have advanced so dramatically in the past decade, there is new information about how courts can improve their handling of these cases. It is imperative that PCCP dynamics are recognized early and intervention is taken as soon as possible to avoid intractability. Case management procedures can be modified to ensure a family is kept with a single judge during the pendency of litigation and that court orders are timely and specific. Lawyers must serve as an educational source for their clients and advise them against exhibiting parental alienating behaviors. Despite needing much more research about ideal therapeutic interventions for PCCP families, available research indicates parent-child contact problem families are best served by multi-therapist teams and a family-systems approach.<sup>253</sup> Finally, custody reversal should be a last resort remedy for the most severe cases of intractable parent-child contact problems where all other interventions have failed to stop pervasive parental alienation. By adopting these recommendations, lawyers, judges, and mental health professionals will be better equipped to serve the child's best interest in having a healthy bond, free from alienation, with both parents.

Marissa Mallon

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<sup>253</sup> See generally Bailey, Dana, Bailey, & Davis, *supra* note 32, at 533; Fidler & Bala, *Children Resisting*, *supra* note 6, at 25; Fidler & Bala, *Lessons Learned*, *supra* note 4, at 585-586.

