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## **SEPARATION AND DIVORCE: A SERIES OF ARTICLES**

**By Dr. Alice R. Berkowitz**

### **INTRODUCTION**

We all know that more marriages end in divorce today than at any other time in history. The overall divorce rate in the U.S. remains 50%, while for some areas of the country it increases to 65%, more for multiple marriages. While statistics tell us that there is a breakdown in the American family, they cannot tell us about what the decision to get divorced means to each marital partner or what divorce means when there are children in picture

Divorce is always a LIFE CHANGING EXPERIENCE. It is THE LOSS OF A DREAM. It is one of the most difficult experiences adults can go through, and when children are involved it only gets harder. Sometimes, it can be the best or the only possible decision. However, even if the decision seems easy, the pulling apart of two or more lives is never easy and the fallout can be devastating. When it is a couple without children, divorce can still be very hard, but the fallout is not as great. When a couple has children, divorce takes on a whole different flavor. It is not only the loss of a dream for the parents; it is altering a child's life and her ideas of safety, home, and stability in a way that will affect your child(ren) profoundly throughout his/her life.

This is not intended to paint a completely bleak picture; adults and children do recover and go on with their lives 90% (Wallerstein, 2001) of the time. However, it is important to know that divorce does change children and adolescents in some ways forever. (To be discussed further under the section on Custody and Visitation). It is also true that about 10% of the population of adults do not recover from divorce and do not move on with their lives. This is typically due to social problems that existed prior to the marriage or when someone stays stuck in their anger at their ex-spouse and refuses to move on. Forgiveness is such a critical part of successfully moving on and forward after a divorce, for everyone's sake.

**SHARED CUSTODY or JOINT CUSTODY**

As mentioned earlier there are a variety of custody plans available to divorced families. Shared or Joint custody is when both parents share physical and legal custody (although it does not have to be 50/50 to call it shared custody or joint custody) of their children. Typically, unless there are certain issues that one parent has in judgment: addiction, emotional problems, domestic violence in front of the children, or child abuse, or it such a high conflict family that the parents can't make good decisions for the children because of their own issues, both parents share legal custody jointly. Sometimes legal custody will be 50/50 with one parent having the right to make a decision if the parents can't agree in certain areas, for example, education and health, sometimes that is referred to as "Final Say." There are many different custodial schedules depending on the agreement the parents reach or the court orders:

Physical Custody can vary from Sole Physical Custody (which only occurs in certain very serious situations such as parent alienation, restrictive gate keeping, alcohol or drug abuse, child abuse, and certain cases of domestic violence) to Shared Custody. When one has sole physical custody, that same person tends to have sole legal custody.

Physical Custody (with the exception of the above) can range from 90/10 to 50/50, usually with joint legal custody. The decision regarding the amount of physical custody is usually either made by the parents in a stipulated agreement, or by the court based on a custody evaluation/investigation and or the Judge's decision based on the details and evidence of the case.

50/50 Physical Custody or Joint Custody: If the child is an infant or under the age of three years old, there is often a step-up plan increasing the amount of visitation to the father (this has to do with overnights only) over the course of a couple of year period to 50/50. In non-high conflict situations, the father may have more day time visitations during those years, with the young child returning to the mother's home to sleep. The reason for this has to do with the critical bonding between mother and child during the first 3 ½ years, the fact that mother hopefully will be breast feeding, and the need for a stable environment (one primary home) for the first critical years. This is not an anti- father statement, this is a pro-child statement; it is just based on the fact that the infant may be bonded to both parents, but for the first three or so years, the primary bond will be with Mother. A primary bond with mother actually increases child's ability to bond with father.

Attachment is critical at this age and the mother's ability to read her infant's (and young child's) cues are critical for the child to have a sense of safety in the world. Donald Winnicott, M.D. (1965) first coined the term "Maternal Preoccupation" to explain how the mother begins during pregnancy to become preoccupied (in a positive way) with her soon to be infant. According to Winnicott (1965, 1975, 1992) this carries on after birth and allows the mother to be particularly sensitive to her infant's needs. She is able to read her newborn's cries, and cue's to create a "holding environment" for the growing baby. This holding environment along with "Good Enough Mothering" helps create a sense of safety over time for the growing

child. T. Berry Brazelton (1969, 1988, 1992, and 2006) shares Winnicott's views on the importance of "the holding environment" and "good enough mothering" for the young child to have a sense of safety and "object constancy" (carrying the good enough mother inside).

There are a variety of shared custody plans from the traditional father has children every other weekend and one night during the week, to one week on/one week off with each parent. It is critical that whatever custody plan you and your ex-partner decide on is in the best interest of your children. It is this author's belief, however, that it is important to have the children on a schedule where they are not jumping from one house to the other every other day. So in cases of 50/50 custody, plans such as 2-3-3-2, 4-3-3-4, or 2-2-5-5 can be very disruptive for the children. This also requires both parents to be cooperative, communicative and have a good co-parenting relationship. For children who can tolerate it, that are at least ten years of age, there is the One Week On, One Week Off schedule: one week at mother's, one week at father's. Some children like the one week on, one week off, giving them solid blocks of time with each parent, allowing them to transition and settle in, without having to do an about-face back to the other parent's home. Other children may have a very hard time with this, being away from either parent for too many days. Each family, as child is unique. It is important to get child-centered, professional help in the form of a consultation with a custody evaluator or psychotherapist that is very familiar with custody and visitation issues and works prior to making an agreement as to what schedule is best for your children.

There are times when there is a change is a situation or the children reach a certain age when it is appropriate to re-visit the custody schedule. In other words, the schedule you may start out with may not be in the children's best interest when they reach a certain age. You might start hearing things from your children about the current schedule they are on. It is not only appropriate, but loving, to seek another consultation at this time. Changing schedules due to age is common and let's children feel as if they have a say in how they live. This does not mean do as they say. This means consult with a professional either by yourself or hopefully with the other parent.

Many children when they reach the age of 15 or 16 do not like to change houses anymore. It is important not to take this as a rejection of they want more time at one house. Often parents force the custody schedule and create rifts with their children for years. We know teenagers are difficult to begin with already. They are struggling to be independent and often battle their parents for control over anything and everything. This is one area to not battle. Try to work with them (it probably will be only one child). If they insist on wanting one home base and that is all that is going on (they are not angry and wanting to punish one of you, or one household is much more permissive than the other one), work with them. Let the parent whose house they are not sleeping at, have more dinner times. It will pay off for everyone. This of course, does not apply to very high conflict families or families where there is parent alienation going on.

Finally, in closing, please remember that shared custody means shared custody. You are sharing raising your children together, even though you have decided to divorce. Think everything you do through, use professionals for advice (even if the court doesn't order it), do not take your anger at your ex-partner out

through custody and visitation issues or your child, and remember that everything you both do must be in the name of the child!

**CO-PARENTING PARENTING PLANS:**

There are basically three types of parenting when both parents share custody of their minor children, at whatever percent The three are: **Cooperative Parenting, Co-Parenting, and Parallel Parenting.**

1. **COOPERATIVE PARENTING:** Cooperative parenting can only occur when both parents are at peace with each other and truly still see each other as equal parents to their children. This usually occurs when people divorce because they both come to realize that they love each other as people, respect the years they spent together, but realize that they are no longer in love with each other as marriage partners. Sometimes it is not as smooth at the beginning, but once the divorce is over, the couple resolves any anger between them and can really respect each other as people and parents. The characteristics of cooperative parenting are:

- a. **Flexibility:** There will most likely be a custody schedule stating whom the children are with on various days of the week. However, in cooperative parenting, there is flexibility. If one child wants to be with a certain parent on a certain night, each parent cooperates without feelings being hurt. They are truly working towards what is in the best interest of their children.
- b. **Decision Making:** In cooperative parenting, decisions about the children are made together and without fighting. Like with any parents, they may disagree at times, but they resolve their disagreements based on the BEST INTEREST OF THE CHILDREN! These parents are true adults and, as such, they can work together relatively easily and efficiently.
- c. **New Relationships:** Cooperative Parents deal with one of the parties having a new relationship (assuming no introductions to children are made for several months) in a healthy and supportive manner. They support the new individual and the new relationship when speaking to the children. Both parents know, however, that they still remain the only two parents to their children and continue to act in such a manner.
- d. **While Cooperative Parenting is clearly the best for the children,** it takes two relatively mature parents who work on themselves and understand that the best chance their children have for growing up emotionally healthy is if they model this for them. However, neither parent can pretend- this type of parenting can only work if both parents are honest and genuine in how they feel about the other parent and their role together as parents to their growing children.

2. **CO-PARENTING:** Co- Parenting is, in principal, similar to cooperative parenting. However, it does not require the same level of positive relationship between the parents. It came out of the movement for fathers to have equal (or close to equal) physical custody and 50% legal custody. This is in contrast to the old school model of mother being given sole custody of the children physically and legally, with father only having visitation rights. Parents that co-parent cannot be considered as having a high

conflict divorce and the continuance of animosity and anger. The following are the general rules for co-parenting:

- a. **Residential Proximity:** Co-Parenting works best if the parents live within a few miles of one another. It makes exchanges at school easier, sports activities easier, play-dates for the children easier. It is possible to still co-parent if one parent lives further away, but it makes things more difficult.
- b. **Economic Parity:** It is very difficult to attempt to co-parent if there is a great economic disparity between the two households. The children start to think of Rich House/Poor House and tend to feel resentful of the differences although they may also be pulled towards the nicer house.
- c. **Resolve Conflicts without Putting the Kids in the Middle:** Do not discuss conflicts in front of the children of in any location that they may over hear (including on the phone). Think about your children's needs first (and do not confuse them with your own needs) and **compromise** when you can. Make sure you stay with a conflict until it is resolved so that there is no parent alienation-aggressive behavior on one of your parts later on. If it is too difficult to resolve on your own, seek the help of a counselor experienced in the area of divorce and co-parenting. Your children's mental health depends on your willingness (and your co-parent) to do whatever it takes to work things out.
- d. **Treat the Other Parent with Respect:** This goes a long way towards easing your relationship with your former partner. It also provides a great model for your children. Disrespect towards the other parent will be played out by the child. Showing respect towards the other parent teaches kids how to respect authority outside the home.
- e. **Observe Appropriate Boundaries:** Now that you are divorced, it is important to learn that you won't know everything or like everything your ex-partner does with the children. As long as an activity won't harm them physically or emotionally (be objective), it probably is none of your business. It's healthy to learn to let go. It's also healthy for your children to learn different ways of doing things. The truth is you have no control over this anyway and that's the hardest thing to get used to.
- f. **Communicate regularly with the Other Parent:** You are both still your children's parents. There is a lot to share. Health information, school information, after-school activities, homework, sporting events, etc. Remember the more you share with the other parent, the more good- will you will create and visa-versa.
- g. **Be Consistent Between Homes:** To whatever extent you can, both parents should be working towards being consistent in each home in the areas of discipline (when to and how), feeding, bedtime routines, morning routines, chores, etc. This will make the transitions between homes easier and will teach your children consistency in their lives.
- h. **Help your Children Recognize the Other Parent on Special Days:** Whether it's cards or gifts, help your children pick our birthday, mother's day or father's day, and holiday gifts for the other parent. It will make your children feel good about themselves and will be appreciated by the other parent.

- i. **Don't Punish Your In-Laws after the Divorce:** It is very important to keep all doors open to your in-laws, the children's grandparents. Grandparents are our children's greatest cheerleaders and our children need them. Grandparents also provide back-up child care and as a single parent, you just might need their help.
  - j. **Don't Allow All the Parenting Tasks to Fall to One Parent:** This is a recipe for disaster. Things that are out of balance don't work well. Even if one parent is not working, make sure that you both work at sharing the parenting tasks equally. Don't hoard tasks or be a martyr, and don't make the other parent in charge of maintaining communication. If you want this to work for all of you- but especially your children, SHARE!
3. **PARALLEL PARENTING:** Parallel Parenting is reserved for High Conflict Divorces, for parents that still carry a great deal of animosity for one another (or at least one parent carries animosity for the other), cannot work together, continue to fight in front of the children, disrespect the other parent, cannot be consistent in their childrearing- in fact they often work to make the other parent suffer even if it hurts the children. Parallel Parenting is similar to being two partners in a corporation who may not like each other, but if they don't work together the company will go under. When I teach parenting classes to High Conflict Couples, I start with this premise. Do you want this corporation that you have built to go under because you two don't like each other? How can you work together, both being heads of a money making corporation that supports many people, without fighting and without having much contact except for emails with each other? There is a great deal more to this, but this is the notion that actually really helps high conflict couples disengage personally and begin to look at their family as a company that they need to run. It becomes much more task oriented and each party over the ten weeks becomes less angry. It does not work for everyone, but for people that know they are hurting their kids and have to find another way at looking at parenting with someone they have been so hurt or angered by, this approach can be very successful. The rules for parallel parenting are:
- a. **Strict Parenting Plan:** This means usually worked out by an evaluator, parent-coordinator, or a judge. The schedule of when the children are to be with one parent and then the other is spelled out in a court order, including vacation days, holidays, etc. Drop- offs and Pick- ups are done either at school (when school is in session), at camp (during the summer-if they go to camp), by a neutral third party when school or camp are not in session, and if there is not a neutral third party, at a public place like in front of a store (or right inside of a store if they live in a cold part of the country) in an outside mall, or in very serious cases- inside a police station. There is no flexibility in changing days or if one parent travels for work, make up time must be planned for on a court monitored email (In Los Angeles, we have Our Family Wizard).
  - b. **Parental Contact can only be through Court Monitored Email Service or if that does not exist, emails or faxes:** Communication between parents is to be strictly confined to changes in schedules (if one parent is traveling), if a child is ill, school reports, or to inform the other parent of an important issue with one of the children. Contact is limited to avoid conflict and fighting and to protect the children from the animosity between parents.

- c. **Parent Teacher Conferences and Other School, Sports Events:** Parents are to schedule separate parent teacher conferences. If needed, a court order can be sent to the school to assure that this occurs. At all other events, especially when children are present, parents are to split up the events, either by event or one parent can go to first half and the other second half. This excludes large school activities, like football, basketball, hockey, or baseball games or graduations, where there are many people and parents can avoid interacting. However, if there is an incident at any of these larger activities, one or both parents needs to report this to the minor's counselor on the case, the parent-coordinator, or their attorney. The idea is to protect the children from seeing negative interactions between the parents, as well as to protect the parents from experiencing them.
- d. **Agreed Upon General Rules for Each Household:** In Parallel Parenting Situations- a set of household rules is agreed upon by both parents with either a custody evaluator, minor's counselor, parent-coordinator or judge. Clearly, the rules in each house cannot be the same, but the idea is to try to structure certain rules for the children that are consistent at each house. For example, bedtimes, showers or baths, morning schedules, mealtimes, homework times, brushing teeth and hair, curfews, driving, dating, etc. The basic rules around taking care of the children are what is hopefully set and carried through.
- e. **No Negative Comments About The Other Parent:** This is critical for the children. They may not say it, but it hurts them deeply to hear one parent speak negatively about the other. It also injures their sense of trust in relationships and may cause deeper levels of emotional problems.

## **SEPARATION**

Separation is usually a trial period that people take when they know their marriage isn't working, but they are not ready to divorce. Separation can be a complete time out where the couple doesn't see each other at all (if they are single) or only when they transition the children. You will have to tell the children together. I will discuss this in the section on divorce, but the words are pretty much the same, as is what to expect, and how to handle your children's responses.

Moreover, if a separation is going to be effective at all at preserving a marriage, there has to be continual contact, even if it is only at the marital counselor's office once each week. There also have to be some rules:

- No dating other people.
- No sexual contact with other people.
- No discussing the separation with the children except for the initial discussion that you both have together.
- No seeing attorneys until you both decide that it's time.

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- Have a clear period of time for a separation. The best ones that work are either three months or six months. Some couples start off with three months and then opt to extend the separation to six months.
- There has to be marital therapy if the couple really has any desire to work things out and this is not just a way to let the other person down easier.
- The marital therapist with the two of you should help set the time frames for starting to date each other again, family time, even when it's time to move back into together. A good marital therapist will know and confront if one of you does not appear serious about the desire to work the marriage out. (The other partner usually knows anyway, but may not be able to voice it out loud).
- The best referral for a good marriage counselor is either friends you know who have been to someone successfully, a family doctor, pediatrician, or a Priest, Rabbi, or Minister.
- Typically, you want to make sure that the therapist is a Licensed Psychologist, Licensed Marriage and Family Therapist, or a Licensed Social Worker. Occasionally, a psychiatrist will be trained in psychotherapy and marriage counseling. Be sure of the person's credentials and their experience doing Conjoint Therapy (another name for Marital Therapy).

Many couples successfully work out their issues through a structured separation with therapy. If you cannot, it is important not to blame yourself or your partner, as long as you have both given it a really good try. Now it's time to move on to divorcing and trying to be as fair and decent as you can be during the process, and to taking care of your children. They will need you both now more than ever. Please remember that everything you do should be with the best interest of your children in mind.

### **THE DECISION TO DIVORCE**

If you are not currently separated and you are considering separation or divorce, I want you to ask yourself the following questions:

1. Why do I want this separation or divorce? Try making a list of all the reasons that you have for wanting to separate from your spouse. Place a star next to the top three reasons. Carry it around with you for a week and look at it over and over during that week. See how you feel at the end of the week about each reason. This does not apply to marriages or relationships where there is domestic violence, emotional abuse, sexual abuse, or child abuse (and you are the victim).
2. If there are any good feelings left for your spouse, and particularly if you have children, consider couple's or marital counseling. If you don't know how to find a good psychologist or other therapist, ask your family doctor, OBGYN, your priest, minister, or rabbi. The other option is to call a university near your home. There is typically a counseling center at every university that provides a list of local psychologists or other mental health professional that specializes in marital or couples therapy.



3. Have a consultation with a Family or Divorce Attorney. Again, doctors, and friends who have been divorced are great referral sources. The local Bar Association in the city nearest to you is another good referral source. Most Family Law Attorneys offer a free consultation. Ask about that before you make an appointment. The purpose of this appointment is for you to get a realistic idea of what your rights are, issues of spousal support, custody and child support (if you have children). Most counties have a web site for the superior court, which handles family law cases (as well as civil, probate, and other non-criminal cases). In Los Angeles, California, the site is lasuperiorcourt.org. That site in your county most likely has a self-help section for family law, where you can learn about how the court works and what options you have.
4. If you decide to go forward with divorce, try to be as respectful as possible to the other party. Mediation is a much cheaper and less stressful way to work out financial issues and at times, custody and visitation issues.
5. If mediation is not a possibility, and you can afford an attorney, hire an attorney to handle your divorce and custody case. Make sure the attorney is knowledgeable in all areas of family law and ask if you can speak to 1-2 clients of hers/his just to hear their opinions about the attorney.
6. The decision to handle the divorce yourself, is called "In Pro Per". It is never advisable to try and represent yourself; it's like walking into a courtroom with a big sign over your head "kick me"! Divorce laws are complicated and particularly if you're soon to be ex-spouse has an attorney, PROTECT YOURSELF! If finances are an issue, many religious organizations have attorneys in every field that will volunteer their time to help people that can't afford private attorneys.
7. Make sure you have a good support system of friends and whenever possible family. If you don't have a good support system, there are often free support groups through Churches or Temples. It may seem uncomfortable to join a support group, but take the leap of faith and go. They really do help!
8. Read as much as you can yourself about divorce, custody and parenting plans (if you have children, of course).
9. **TAKE EXTRA GOOD CARE OF YOURSELF!**
  - a. Eat well and pay attention to nutrition guidelines: Make sure you take a High B vitamin as well a multi-vitamin. They will help with stress and give you energy. Remember that stress tends to strip your body of essential nutrients and serotonin. Taking vitamins and eating well will help replace what you are losing as a result of added stress. (O'Donnell, 2007).
  - b. Get plenty of sleep: Sleep is essential to maintaining your health and emotional well-being especially when you are under stress. If you have trouble sleeping, drink a cup of warm milk. Warming the milk brings out natural L-tryptophan, an amino acid that is naturally found in the body that will help you fall asleep (by the way, turkey also is full of L-tryptophan). If you need more help sleeping, melatonin is sold in health food stores and is also a natural enzyme that is found in the body, but it is also a great natural sleep aid. (O'Donnell, 2007).
  - c. Exercise: Exercise even if you hate it. At least take power walks so that you get your heart pumping a little and stimulate your endorphins. Endorphins are the

peptides in your brain that activate the opiate receptors (in other words, they make you feel very good). This again is particularly important for helping cope with the stress of a divorce.

- d. Pamper yourself: Take hot baths, use essential oils and bath salts in your baths, use luxurious feeling creams on your body, burn wonderful smelling candles-particularly lavender for relaxation. Get a massage; sit in a steam room or sauna, read a great book. Do whatever makes you feel relaxed and renewed. Please know this is for men, as well as for women.
- e. Be careful that you do not begin to drink alcohol excessively: The rule of thumb is 1-2 glasses of wine or one drink of hard liquor 2-3 times a week. Some people have one glass of wine every evening. However, this is a vulnerable time and just pay attention to your consumption. If it becomes greater than what I am describing, or if you are also taking prescription anti-anxiety medication, please seek help. Speak to your family physician, a psychologist, social worker, an addiction specialist, or attend an Alcoholics Anonymous meeting. They are listed on the internet and have many meeting times in cities and small towns all over the country. I bring this up, since going through a divorce can also be a time where people begin to abuse alcohol and other substances as a way to numb the pain they are experiencing. It is nothing to be ashamed of. As I've said, divorce can be devastating and people often don't have the coping mechanisms to know how to deal with the pain and alcohol and drugs are often the first line of defense (although the least healthy)!
- f. Get a Physical: Call your family physician or internist and go have a complete physical. Stress can bring on all sorts of conditions such as thyroid, anemia, high blood- pressure, ulcers, etc. Chances are there will probably be nothing wrong, but it never hurts to be careful.

**THE PROCESS OF DIVORCE: What You Need To Know and Do to Take Care of Yourself:**

Make sure you know the time lines in your state for date of separation (usually the date one party leaves the marital house or for couples that can't afford to physically separate, the date that one party files for divorce). Is your state a no-fault state or do you have to sue your spouse for divorce based on some violation of the marital vows? Most states today are no-fault states, which mean you can't be denied. This is a very important question to ask in your first consultation with an attorney.

Make sure all your financials are in order and that you know where all the community property funds are. Make sure you make a list of all marital assets (houses, stocks, bonds, mutual funds, savings accounts, retirement funds, checking accounts, cars, boats, planes, jewelry, etc.).

**PROPERTY:**

**Personal Property** This is money and property that you either had prior to marriage or that you received as part of an inheritance during the marriage. Even if you have used this money for mutual means during the marriage, if you can trace it coming in from a separate source, it will remain yours after divorce. You do not need a Pre- Nuptial Agreement for pre-marital funds and property to remain as part of your personal property.

**Community Property** These are all of the assets that the marital couple has gained during the marriage; all money that is earned, property purchased (with the exception if one of you used personal money for the down payment. That can be deducted from the community asset at the time of divorce if you can prove that those funds came from an independent source), retirement funds, securities, etc. The only instance where personal property may become part of the community property is if it is legally given to the community by the individual in a pre-nuptial or postnuptial agreement.

Make a list of all furniture and other valuable items from your house(s), safety deposit boxes, jewelry, etc. Items that are your jewelry (male or female) will remain yours unless it was a family heirloom from your spouse's family. Personal community property will have to be divided up. Making these lists ahead of time, saves problems for the future. We are always hopeful that marital partners will be honest during divorce, but that is not always the case.

It is important to know all of your personal and community financial information throughout marriage. However, it is critical when you are considering or have made the decision to separate or divorce. This is the area that most problems arise during divorce. In fact, even when there are children involved, some of the worst battles over custody are really not about the children at all, they are about one parent not wanting to pay the other child support. So know your financial affairs and make sure you keep an up-to-date list of all property and money.

**THE OPTIONS:**

When you prepare to divorce, you and your estranged spouse have several options as to how to accomplish this.

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**MEDIATION** Mediation is by far the least expensive and most humane manner to end a marriage. In most states, mediators are either attorneys or mental health professionals trained in mediation. In fact, many states have “certified mediators” who have completed a specified program in mediation. In mediation, both parties may or may not have their own separate attorneys who just look over the agreement before it is signed. The work, however, is done by both parties and the mediator. Both parties bring all their assets, community and non-community to the mediator to work out a settlement. This typically takes up to five meetings. It is based on both spouses being honest and wanting to reach an agreement that is fair and without a court battle. Each mediator sets the number of meetings (typically five) that it should take to reach a resolution. If a resolution cannot be reached within that time period, the mediator sends the couple back to the family law system.

**COURT** When you make the decision to go through the court system, most people hire attorneys (some represent themselves- “In Pro Per”) but it is always recommended in the court system to have an attorney. Family Law Courts are typically in the Superior Court System (or there may be another name depending on the state) of the County in which you live. The courts tend to be backed up and where mediation may take five sessions, reaching a resolution or “judgment” in family court can take from 1-5 years, depending on how cooperative the parties are, whether forensic accountants have to be called in, and the calendar of the court. Today with budget cuts, most states have less judges or commissioners (judicial officers that have all the same authorities as judges, but have not been named as a judge in that state). Due to budget cuts, there are less court dates available, which increases the time it takes to complete your divorce.

**SETTLEMENT** It is possible that you and your spouse, usually with attorneys, can reach a settlement that can be agreed to (stipulated to) even though your case is in family court. This does happen, but it is typically after a long time in family court and immediately preceding trial (trial in family court does not include juries. The judge or commissioner makes the final decision). This is still an expensive and stressful way to end a marriage.

**PRIVATE JUDGES** Private Judges are typically retired family law judges that can be hired by you or your attorney to attempt to expedite the process of divorce. They tend to be very skilled and can help to resolve issues quickly. They, like regular court judges, have the right to make final decisions in divorce cases. If you do not like the decision of the private judge, you can go back to Family Court, but it will take

even more time and money and often the decision will be the same. Private Judges typically run about 2000.00 – 5000.00 per day to be split by both parties, but your case will be resolved within one day.

In summary, divorce is a time consuming, expensive and emotionally draining process. You are pulling apart at least two lives (with children- much more). I urge you as I urge people that I counsel to practice forgiveness and use mediators when you can. Anger will just eat you up, and the best defense against being hurt is DOING WELL not trying to punish your soon to be ex-spouse with a long and financially devastating divorce.

### **DIVORCE WITH CHILDREN:**

When you have children, divorce becomes much more serious of a matter. In a monumental book entitled, “In the Name of the Child” (1997), Janet Johnson and Vivienne Roseby do an excellent job of describing the problems that occur for children when their parents stay angry. It has become a very important “bible” for custody evaluators, mediators, and judges. When orders are made in court or recommendations are made by evaluators, they often state that they are being made “In the Name of the Child”. This term has become synonymous with “In the best interest of the child”. According to the authors, “Although most former partners manage to separate their needs and preserve their parenthood, one-quarter to one-third of couples have considerable difficulty in doing so and at least five to ten percent clearly fail. They remain hostile for many years, placing their children at high risk for lifelong emotional and behavioral problems. These children bear serious risk of repeating the cycle of conflicted and abusive familial relationships into adulthood.” Johnson, Roseby, and Kuehnne have published an updated version of the 1997 book, entitled, “In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce. Second Edition”.

I begin with this statement and these two books because as a clinician and custody evaluator, I see the 10% that Johnson and Roseby speak of. However, my estimate is higher than 10%. In my experience in private practice, as a parent, and as a custody evaluator for over 25 years, I would say that high conflict divorces with high risk children are closer to 20% of the divorced population with children. There are degrees of damage that these families create, but I begin with this so that if you see yourself as being in this situation, you will read on and seek help for yourself and your children. I begin with the basics:

**Telling your children that you and your spouse are separating and/or divorcing:** In most families, when the parents have come to the decision to divorce or separate, the children (unless they are very young) already know on some level. (I also use children, even though we may be speaking of a single child) They may be asking one or both of the parents, they may be acting clingier than they have in years, or they may be acting out and getting into trouble as a way of saying, “Don’t do this! I need you both together”. Other children act as if they don’t know anything, but later on may tell you that they did know and site an incident that they believed caused the decision. As I’m sure you know children have a tendency to blame themselves for a divorce. “If I was only better behaved”; “If I only cleaned my room more, if I was only smarter, if I was only a better student or athlete, etc., etc., etc.”

For children, it is their childlike omnipotent way of trying to believe they could have had some control over their parents separating; even if the idea makes them feel guilty or bad about themselves. For many children this is preferable to feeling completely helpless over the decision (which they actually are). So below are the pointers to telling your children you have decided to separate:

Make sure you tell them together. No matter how tense things are between the two of you, it is critical that you pull it together, act like grown-ups and tell your children together in as calm a way as possible.

Tell them at home, not too close to bedtime, and make sure that whoever is moving out does not move out for a few days or a week. You want them to have time to get used to the idea. If things are very tense between you and your spouse, give the kids the time, but just work it out so one of you is out when the other is home, but try to sleep in the same house (separate rooms are fine).

When you tell the children, make sure you tell them (whether it is true or not), that this is both of your decision. It should go something like this, “We, your parents, have something to tell you. Please don’t interrupt until we’re through talking even if you really want to. You all will get your chance to talk when we are done. We have decided to separate. We love you all very much and none of you have done anything to cause this. Please remember this. This has been a very hard decision for us to come to, but we don’t love each other in the same way that we used to. We love all of you very much and wish things were different, but we are not comfortable living together anymore. We’ve really tried to work this out, but we just haven’t been able to. The last thing either of us wanted for our family was to separate and (if you are certain it will be a divorce say divorce). What we will promise you is that we both will always love you the same way and still

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be your parents. We'll do our best to make this as easy as possible on you, even though we know it's not easy. We are both deeply saddened for our family and know that it will be hard for everyone for a while. We believe we are doing what's best for all of us. Having two parents that are not happy together anymore can be harder for a family than separation (or divorce). Okay, now let's hear from each of you one at a time.

Know that your children will be interrupting and probably crying as you tell them this. You and your spouse may be crying also. This is one of the hardest things you will ever do! It is important to keep on track and finish what you are telling them- no matter how hard it is. It is also very important to tell the children who will be moving out and what kind of a visitation schedule they will be having with each of you. These are called temporary custody and visitation schedules since your divorce is not final or the custody and visitation schedule has not been finalized by a mediator, private judge, or the court. Hopefully, you both will be able to come to an agreement on your own that is good for your children and it can just be written up by a mediator or your attorneys and have it filed with the court as a final agreement (called a stipulated judgment).

Temporarily, it is important to make sure the children have as much access to each parent as possible. If you and your spouse are unable to get along, this is considered a high conflict divorce and even the temporary custody plan must be written out very specifically (I will address the different types of plans later on).

If you are really just having a trial separation, you change what you are saying to something like, "We have something to talk to you about. Please don't interrupt..... We, your parents, were having some difficulties living together. We have made the decision to have a trial separation for three (or six months) to see if we can work out the problems in our marriage. The rest should be the same. As I stated above, the children must know that you both love them very much and that they are not at all responsible or to blame for the separation or divorce. Marriages or partnerships end or need a period of separation because of the parents- never because of the children. Even if you have a developmentally disabled child, a special needs child, a physically disabled child, or a retarded child, it may put stress on the marriage, but many couples find a way to hold on to each other even under the most stressful circumstances. Likewise, many families have very easy children, plenty of money, friends, and great families, and they still fall out of love with each other or the marital bond gets broken. I say this, because I can't emphasize enough the importance of making sure your children know that the separation is not their fault and that they are loved by you both very deeply.

Finally, and most importantly, regardless as to why the marriage is not working- whether one of you had an affair, had another child with someone else during the marriage, gambled away all the family's savings, etc. It is critical to not parent alienations that information on to the children- not at this point. If an affair broke up the marriage, this is something that you keep to yourself no matter how much it hurts. Children should never know that a parent had an affair, even if that parent marries the person later on. This is what I call "adult issues", along with financial matters, if a parent is a cross-dresser, bi-sexual, or gay. These are issues that you never tell your child. If the parent that is leaving the marriage because s/he realized s/he is gay, it is up to that parent to tell the children if she decides to. It is never up to the other parent. If we are talking about alcohol or drug abuse or domestic violence, that is different and you will have to tell your children, but you will need the help of a good therapist and attorney or attorney service.

### **DIFFICULT ISSUES**

**DRUG AND/OR ALCOHOL ABUSE:** If you are leaving your marriage because your spouse has a drug and/or alcohol problem and will not seek help, you have to assess whether your spouse could present a danger to you and your children if you leave. The best predictor of violence is parent alienation violence, but what some drugs like methamphetamines, Crack, or cocaine, a parent alienation that has no violence may not matter. It is important to seek the help of an addiction specialist and a family law attorney or center. There are services for low-income families across the country for issues like this. For instance, the Chabad Centers are in every major city and are run by the Jewish Community, but service anyone in need. They are devoted to helping people who are dealing with issues of alcohol and drug abuse. They typically have connections to attorneys that work on a pro-bono (for free) basis that can give you advice as to how to proceed. This, as well as domestic violence, is two areas in which you do not tell the children together. You may, depending on the level of alcohol or drug abuse, need a restraining order and a plan to get yourself and your children out of the home safely (or the other party out of the home).

**DOMESTIC VIOLENCE:** Domestic Violence is considered to be one of the most serious issues in Family Law Court. If you have been the victim of Domestic Violence- if you've been hit, beat up, burned, held hostage, or victimized in any way- and you have made the decision to leave the marriage, you must seek help from a Domestic Violence Shelter or Domestic Violence Counselor. You are absolutely making the correct decision, but you need protection. This category typically pertains to women, but not exclusively. Although women who have been the victims of domestic violence, are in most danger when they actually make the



decision to leave the relationship in which they have been abused. According to the National Organization of Women and Web MD (2011), “Up to 75% of domestic assaults reported to law enforcement agencies occur after the separation of the couple, with women most likely to be murdered when reporting abuser or attempting to leave the relationship”. This statistic is not new, the percentage may change over the years, but the critical point is that if you are a Victim of Domestic Violence, you will need help and a plan, including restraining orders (not that they really protect you from a violent partner or estranged spouse). One of the best resources countrywide is an organization called “Victims of Violent Crimes”. If you have ever been abused, this group is for you. Don’t try to tell yourself “it’s not that bad”- that’s how women and children sometimes get killed! There are many new laws to protect victims of domestic violence and their children. Victims of Violent Crimes, will help find you safe housing, hide your identity, provide attorneys and mental health professionals that can help you and your children through this time, help you find employment after a period of time in a safe place where your estranged spouse can’t find you or the children (they often can even change your name to be sure that he cannot reach you).

As an attachment (Attachment I), I am including “The Battered Women’s Readiness Kit”. This tells you everything you should start to assemble after you contact Victims of Violent Crimes (or even before- but carefully). Another program that offers support for women who are victims of domestic violence providing:

- Crisis Intervention
- Outreach
- Counseling for parent and children
- Safe Housing
- Court Advocacy
- Volunteer Attorney Services
- Children’s programs
- Anger Management Classes
- Restraining Orders
- Career Counseling, Vocational Training, and Placement
- Childcare while in training or working
- Help finding Safe permanent housing
- Protection Classes, such as martial arts or other forms of self- defense.

Los Angeles Family Law Attorneys support the Harriet Buhai Center. The Harriet Buhai Center, not only offers housing, protection, counseling, vocational training, and children's program, but some of the top family law attorneys in Los Angeles County volunteer their time to help and try to put an end to domestic violence. The telephone number for the Harriet Buhai Center in Los Angeles is (213) 388-7515.

Even if you don't live in the immediate vicinity of any of the centers listed above, telephone the closest one to you anyway. They will help you find a program closer to your area. There is always help out there if you just start by making one call.

Domestic Violence does not only occur at the lower socio-economic levels, it is equally as present in middle or upper middle class families. It may be hidden more in these families for longer periods of time, but there is no SES level that precludes abuse; it tends to be generational and based on the need to control to whatever degree the aggressor finds he can. Even murder is an attempt at control- "if I can't have you, no one will".

### **HIGH CONFLICT DIVORCES :**

High Conflict divorces are painful and debilitating to all members of a family. They may never resolve, with many unnecessary appearances in court, enormous attorney's fees (at times into the several million dollar range). Even if one or both of the parties are in pro per, they still spend enormous amounts of time and lost days of work fighting over some of the smallest details in court year after year. High Conflict Divorces are characterized by the following issues:

According to Johnston, Roseby, and Kuehnle (2009), about 1/3 of all divorces today are characterized as High Conflict Divorces. In High Conflict Divorces, the parents turn their unresolved issues with one another into anger and animosity to such a degree that it is toxic to everyone in the family. This constant state of conflict and hatred towards the other parent takes years after separation and divorce to resolve, if it ever can be resolved.

- The parents tend to denigrate the other parent in front of the children with little to no regard that they might be affecting the children.
- The parents often cannot be in each other's presence without arguing or creating conflict, whether this is in front of the children, at school functions, or even at sporting events.

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- The children are caught in the middle, unable to be heard by either parent as to the level of distress they feel as a result of the ongoing anger and conflict between their parents.
- The children are often used to parent alienations messages including threats and insults back and forth between the parents, leaving the children feeling more anxiety and distress on a daily basis.
- The parents tend to make unilateral decisions about the children without consulting the other parent.

According to Johnston, Roseby, and Kuehnle, in their 2009 study, domestic violence is reported in about 2/3 -3/4 of high conflict families in custody disputes. Most custody disputes that are on going tend to be initiated by high conflict parents. As stated, these are cases that are reported, not substantiated. According to Mary D. Morahan, LCSW, in a study done for the Los Angeles County/ University of Southern California Violence Intervention Program (2009), the actual number of substantiated cases of domestic violence in families is about 1/2. In that 50% of homes where domestic violence is present, the violence rising to close to 70% during litigation or when the victim attempts to leave the marriage (discussed earlier).

- If it is not physical domestic violence, the children certainly witness a fair amount of emotional abuse, either between their parents or sometimes towards them if they get in the middle of a conflict.
- There may several reports to the Department of Child and Family Services made by one of the parents or both of the parents, alleging that the other parent abused or neglected one or all of the children. This completely disregards what the children will go through when DCFS has to come out and investigate the report.
- Probably most characteristic of this population is that the parents are so angry they have trouble focusing on their children's needs as separate from their own. They do not protect their children from their own emotional distress or the ongoing conflicts with the other parent.
- Children from High Conflict Families typically have a much higher rate of emotional problems. They typically have trouble trusting and communicating. They tend to have problems in their friendships and in developing healthy relationships as they grow up.
- Children that grow up in High Conflict Families that have not been in psychotherapy, have a much greater chance of carrying the same scenario into their own families as adults. This can become a multi-generational problem.
- **More than anything else, children living through High Conflict divorces that then become High Conflict Families suffer an inordinate amount of pain.** They either feel like they have to fix the conflict, feel enormous anxiety all of the time, walk around with holes in their heart every day they live with the

conflict. These may be children that showed enormous potential when they were younger and that often act out enormously as teenagers. They may have behavioral problems, use drugs, and alcohol, self-mutilation or self-injury (for example cutting), suicide attempts, and, suicide. These are the true victims of divorce, the true victims of parental anger and rage.

**PARENTAL ALIENATION :**

**Is there any possibility that you are the victim of Parental Alienation or could you be the Alienator?**

Parental Alienation develops out of High Conflict Divorces where there is a protracted period of conflict and hostility between the parents. Characteristics of Parental Alienation are as follows:

**Alignment:** Alignment is when one child or more than one child expresses a preference for one parent. This can be due to age, gender-identification, and possibly after divorce it could be a reaction to the circumstances of the divorce. The child could be angry or hurt at the other parent's decision to divorce, or the child could feel enormous loyalty to the parent left behind. However, in cases of Alignment, they tend to be time-limited if they are handled appropriately by a warm non- defensive parent or can be resolved by brief counseling.

**Estrangement:** On the other hand is typically the result of the "estranged" parent's behavior. Whether it is domestic violence, physical abuse towards the children, or emotional abuse towards the children or other parent, the children in the family become estranged as a result of the estranged parent having severe parental deficiencies (particularly problems with anger, control, emotional or physical abuse, adultery that the children know of, or alcohol or other addictions that are untreated). I find in many cases of estrangement, the parent that is estranged tries to claim Alienation, and blames it on the other parent. A good custody evaluator or a therapist familiar with these issues can usually call the situation as it is, and focus on the reasons for Estrangement.

**Parental Alienation:** Parent Alienation takes a while to develop and must be differentiated from Alignment and Estrangement. This was initially likened it to "The Stockholm Syndrome." The Stockholm Syndrome is when someone who has been kidnapped or abducted and held for a long period of time begins to identify with his/her abductors. A perfect example of this was the case of Patty Hearst, the famous heiress to the Hearst Newspaper Fortune who was kidnapped by the Symbionese Liberation Army (SLA) in 1974. After many months of living with her captors, Patty Hearst began to identify with her abductors and then joined

their cause. She did not want to be rescued, but once caught, it was years of psychotherapy and de-programming before she could return to her own life and family.

Although the children as victims of parent alienation may not be abducted, the similarities to Patty Hearst's experience are actually very similar, including their tendencies to "Identify with their Aggressor" (A defense mechanism first coined by Anna Freud, in developing on her father's original defense mechanisms in the renowned book, *The Ego and The Mechanisms of Defense*, (1936).

Parent alienation typically develops in children ages 7-15 years of age. We may certainly see the signs of alienation earlier, but it is not until a child is at least seven years of age that they really can begin to show the signs of parent alienation. Children older than 15, usually have enough of their own identity and their own lives, that they will not be indoctrinated by a parent beginning at that age.

Parent alienation can be provoked by conflicts other than custody matters. For example, child support issues, the alienated parent having a new relationship, or even more trivial matters such as differences between the parents about schools or camps for the children.

Alienating is a gradual and consistent process that is directly related to the time that the alienating parent spends working on alienating the child or children. For some parents this becomes a full-time job. All of their time is devoted to thinking up tactics and planning ways to alienate their child or children from the other partner.

Slow judgments by the courts exacerbate the problem. So often, alienation can be hidden or justified by the alienator that it often takes the courts a long time to catch on. A custody evaluation by an evaluator familiar with parent alienation helps considerably, but this often can be put off for years.

Children subjected to excessive alienation may develop a severe mental illness. If not a severe mental illness, children subjected to parent alienation certainly develop personality disorders and gross distortions regarding relationships with others.

Successful Parental Alienation has profound long-term consequences for the child and other family members, which are only to be appreciated once the alienation has been going on for a significant period of time.

### **TACTICS OF ALIENATION**

According to Garbarino and Stott (1998) the authors' cite five tactics of alienation, that highlight the problems well:

**Rejection:** the Alienating Parent rejects the child's need for both parents. The child feels abandoned and rejected by the alienating parent whenever she or he expresses positive feelings about the other parent.

**Terrorizing:** The alienating parent bullies the child into being terrified of the other parent and punished the child if the child expresses any questions or disagreements about this.

**Ignoring:** The Alienating Parent withholds love and affection from the child to create such desperate feelings of abandonment that the child begins the campaign of rejection and denigration against the other parent.

**Corrupting:** The Alienating Parent encourages the child to lie about and be aggressive to the other parent. In very serious cases, The Alienating Parent will actually recruit the child to assist in deceptions and manipulative behavior intended to harm the other parent.

**Vulnerability in Attachment:** One of the most important factors as to why these tactics work so well in some children is that they are starting off with certain vulnerabilities in the areas of attachment, object constancy, fears of abandonment, being victims of emotional abuse (or physical abuse), and living in a chaotic family where they do not feel safe or protected. Certainly the age that the alienation begins is another major factor. The alienated parent's personality is also a factor, if that parent is perceived as weak, distant, unavailable, or fragile, or extremely rageful next to the alienator, the alienator is going to literally become the child's salvation in their mind. As Wallerstein and Kelly (1980) refer to the bond between the child and the alienator and as an "Unholy Alliance". This was prior to Gardner's (1985, 1987) work, where he actually coined the term "Parental Alienation."

### **CHARACTERISTICS OF PARENT ALIENATION**

Kelly and Johnston (2001) delineated characteristics of Alienated Children. They built on the work of Richard Gardner (1985, 1987), and further attempted to categorize the features most seen in children suffering from parent alienation. The following features are the most relevant in this author's experience. It should be noted that in the early 1990's, a conflict arose within the Psychological and Psychiatric Community as to whether Parental Alienation was actual a "" and thus deserving a code in what has become the Diagnostic and Statistical Manual V of The American Psychiatric Association. The issue was never whether or not Alienation exists or whether it occurs as the result of one parent's ongoing planned and angry denigration of the other parent towards his/her child(ren). The issue was ONLY a professional term related to the clinical nomenclature. It is important that this is noted, since many people within and without of the court system attempt to deny it's existence based on whether or not it is not a . In this author's mind, it is clearly a syndrome, whether we include it or do not include it as a clear and distinct diagnostic code at this time.

1. Alienated Children are openly "hateful" or "contemptuous" towards the "rejected" parent and his/ her deficits."
2. They demonize and vilify the rejected or alienated parent and often present trivial and irrational reasons for their hatred. For Example, Mommy can't cook; daddy doesn't read well.
3. When the alienated parent's shortcomings are considered, the child's angry rejection still seems excessive. Daddy doesn't come to my dance recitals- but with such rage, self-righteousness and completely indignant.
4. The child expresses as "absolute refusal to see the alienated parent in any setting, including a therapeutic one".
5. The child will only talk to professional- like minor's counselors or their own therapists that completely support their positions.
6. The child rejects not only the alienated parent, but the grandparents and other family members on that parent's side that at one time the child was very close to.

7. The child idealizes the parent that s/he aligns with (the alienator). The child sees that parent as absolutely perfect. The child excuses major personality problems or parenting flaws that the aligned parent may make.
8. There is absolutely no guilt or ambivalence towards the parents whom the child viciously denigrates. In making claims against that parent, the child seems to be enjoying himself.
9. The child appears to feel entitled to have free reign over all decision-making regarding the rejected parent, as well as their inappropriate behavior, animosity and disrespect towards that parent.
10. The alienated child demonstrates an obsessive hatred toward the rejected parent. The child is distraught and fixated on their hatred in the evaluator's or reunification therapist's office. However, in school and in other areas of life, the child appears to function fine.
11. The child's schoolwork stays intact. However, given the rigidity with which they approach their hatred for the rejected parent, eventually this begins to spill over to friends and other authority figures.
12. If the court orders visitations, it is the rejected parent's home that is problematic. The alienated child will often destroy furniture, break things, act in bizarre ways and the child may even physically abuse the alienated parent.
13. When the alienated child refuses contact with the rejected parent, all efforts of the rejected parent to communicate are rebuffed. The child demands that the alienated parent never contact them again, and the child will not pick up phone calls, open cards or gifts.

It is the experience of this Expert and Child Custody Evaluator that the only real possibility of changing this pattern is a court order that changes custody, giving the rejected parent sole physical and legal custody. There would be absolutely no contact between the alienated child(ren) and the alienating parent for at least 90 days. After that first 90 days, gradual monitored visitation with a professional monitor would begin with the alienating parent and the alienated child. It is the Professional Monitor's duty to watch the alienator and the child closely, not allowing any private conversations or plans to be made for outside monitored visits. Alienators and Alienated Children can be very sneaky to find ways to meet at school, to have a mutual friend provide the child with a cell phone from that parent so they can talk at all hours. All parties must be in



counseling and if the child genuinely becomes different at home with the parent that had been the victim of alienation, more time can be given to the alienator and the child with a monitor; however, if the child continues to act out, visitation must remain very limited and always monitored.

Along with the change in custody, the child and the alienated parent must be in reunification therapy with a therapist who specializes in dealing with parent alienation. Often the siblings are brought into the sessions as well, in attempt to regulate the family system and to bring some reality to the alienated child's view of both parents.

The possibility for programs for the entire family, similar to the Wilderness Programs, that parents send their acting out teenagers to would be a wonderful idea to help break the cycle of parent alienation. I have not heard of any such program to date, but it would be a wonderful and difficult program to develop and maintain. In addition to be able to get both parents and all of the children to a remote camp for at least 4-6 weeks is also hard to do, as well as the cost of such a program. It would, however, be another way to deal with breaking the brainwashing and working with the entire family on establishing healthier ways to interact.

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