



2000

Professionals' Perceptions of Divorce Involving Children

H. Patrick Stern M.D.

Pippa Simpson Ph.D.

Trevor Gage M.D.

Kim Worley M.D.

Follow this and additional works at: <https://lawrepository.ualr.edu/lawreview>



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

H. Patrick Stern M.D., Pippa Simpson Ph.D., Trevor Gage M.D., and Kim Worley M.D., *Professionals' Perceptions of Divorce Involving Children*, 22 U. ARK. LITTLE ROCK L. REV. 593 (2000).

Available at: <https://lawrepository.ualr.edu/lawreview/vol22/iss3/12>

This Essay is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

PROFESSIONALS' PERCEPTIONS OF DIVORCE INVOLVING CHILDREN

*H. Patrick Stern, M.D.**

*Pippa Simpson, Ph.D.***

*Trevor Gage, M.D.****

Kim Worley, M.D.

I. INTRODUCTION

Divorce can have far reaching and severe effects on those involved, especially children. High conflict divorce, defined as disagreements about finances, custody, child rearing, property, etc., which continue intractably between parents, and the parents' attempt to resolve these conflicts by using tactics such as verbal aggression, physical coercion, and recurrent litigation,¹ has been found to greatly increase the risk to children. Children of high conflict divorce may develop severe physical, cognitive, and emotional problems.² Children whose parents divorce have been reported to experience psychological abuse. Klosinski described this maltreatment as one parent attempting to ally with the child against the other parent, using the child to meet the parent's needs, abducting of the child, or the child witnessing physical abuse by one parent of the other parent.³

Divorce in the United States has reached epidemic proportions with more than one million marriages disintegrating each year.⁴ This fact, alone, is staggering; however, estimates that 40% of children will experience divorce before age 16 may be the most disturbing statistic.⁵

* Department of Pediatrics, East Tennessee State University; Department of Psychiatry and Behavioral Sciences, East Tennessee State University. The author wishes to thank Ranko Shiraki Oliver, J.D., and Michael Melton, Ph.D., for their assistance in the preparation of this article.

** Department of Pediatrics, University of Arkansas for Medical Sciences.

*** Doctor Gage and Doctor Worley are members of the Department of Pediatrics at East Tennessee State University.

1. See Janet R. Johnston, *High Conflict Divorce*, 4 CHILDREN OF DIVORCE 165, 166 (1994).

2. See Kieran P. O'Hagan, *Emotional and Psychological Abuse: Problems of Definition*, 19 CHILD ABUSE & NEGLECT 449 (1995); Karen E. Anable, *Children of Divorce: Ways to Heal the Wounds*, 5 CLINICAL NURSE SPECIALS 133 (1991); Domeena C. Renshaw, *Divorce Sequelae in Clinical Practice*, 20 COMPREHENSIVE THERAPY 84 (1994).

3. See Gunther Klosinski, *Psychological Maltreatment in the Context of Separation and Divorce*, 17 CHILD ABUSE & NEGLECT 557 (1993).

4. See Myron E. Wegman, *Annual Summary of Vital Statistics - 1993*, 94 PEDIATRICS 792 (1994).

5. See Larry L. Bumpass, *Children in Marital Disruption: A Replication and Update*, 21 DEMOGRAPHY 71, 71-82 (1984).

The problem is even greater in the African American community, with 75% of black children compared to 38% of white children experiencing divorce prior to age eighteen.⁶

The legal concept of the "best interests of the child" is the standard used in divorce cases when children are involved. However, it is known that this concept is often not used by judges.⁷ On the contrary, parental rights are often the focus of the judicial decision.⁸ Since there is evidence that children of divorce often suffer psychological trauma, the need exists for judges and attorneys involved in divorce cases to refocus on the "best interests of the child."

Another area of concern in high conflict divorce is protection of families and professionals from legal harassment. Professionals in divorce may come under vicious attack especially by an attorney who disagrees with the professional's opinion.⁹ Spouses and children have suffered injury and been killed while involved in divorce proceedings in addition to experiencing psychological abuse. Although standards exist for professionals who work with families undergoing divorce, such as those proposed by the American Psychological Association,¹⁰ the authors are not aware that qualifications have been enacted by professional organizations or state legislatures for professionals who undertake this complex work. The standards may not be adequate to protect spouses and children, or more likely, adherence is non-existent.

The epidemic of divorce touches most children, parents, and professionals. An awareness of the potentially devastating effects of this epidemic is what prompted the authors to prepare a survey with the targeted audience being professionals involved in divorce.¹¹ This survey attempted to define the perceptions of members of the professions (*i.e.*, judges, lawyers, social workers, psychologists, and pediatricians) that

6. See *id.* at 74 (1984).

7. See Robert D. Felner et al., *Party Status of Children During Marital Dissolution: Child Preference and Legal Representation in Custody Decisions*, 14 J. CLINICAL CHILD PSYCHOL. 42, 47 (1985).

8. See Arlene B. Schaefer, *Forensic Evaluations of Children and Expert Witness Testimony*, in HANDBOOK OF CLINICAL CHILD PSYCHOLOGY 1057, 1067 (C. Eugene Walker & Michael C. Roberts eds., 1992).

9. See Robert L. Halon, *The Comprehensive Child Custody Evaluation*, 8 AM. J. FORENSIC PSYCHOL. 19 (1990).

10. See Committee of Professional Practice Standards, American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, AM. PSYCHOLOGIST 677 (1994).

11. This survey was one component of a national, multidisciplinary symposium entitled "Children of Embattled Divorce" held at the University of Arkansas at Little Rock School of Law in September 1999.

most frequently deal with divorce involving children. The major topics addressed were the concept of high conflict divorce, psychological abuse in high conflict divorce, the concept of best interests of the child, qualifications of professionals serving children in high conflict divorce, and protection of professionals involved in high conflict divorce from harassment. These topics on divorce were selected to understand statewide and national professional perceptions to enhance the value of a national conference on high conflict divorce. The authors were unable to identify any previous research regarding this topic.

II. METHODS

A four page questionnaire was developed to assess professionals' perception of divorce. The questionnaire included open ended questions, multiple choice responses, ranking answers, and a five point Lickert-type scale.¹² Pediatricians, social workers, psychologists, attorneys, and judges were selected because of their frequent interaction with children and parents who divorce.

The questionnaire was mailed to 200 individuals in each profession divided equally between the State of Arkansas and at least two from each state nationally totalling of 1000 questionnaires sent.¹³ A postage paid envelope was enclosed for the return of the completed questionnaire. The individuals identified to participate were systematically selected from published directories within each profession. Each questionnaire was accompanied by an explanation of the study and instructions for completing the survey. The completion of the questionnaire was strictly voluntary and there were no incentives offered. A follow-up reminder post card was mailed to each participant. Approximately 60 questionnaires were returned from each profession with 326 total and a relatively equal number from Arkansas and the rest of the United States giving a response rate of 33%. The results were summarized as a proportion and mean and standard deviation or median and range.

12. See Appendix I.

13. There were only 70 judges in Arkansas.

III. RESULTS

Some of the results from the questionnaire will be included in the discussion. Results which required written responses will be summarized with particular noteworthy responses stated directly.

A total of 170 males and 144 females who were 25 to 80 years old with a mean age of 50 responded to the survey. The professionals had been in practice from 1 to 51 years with a mean of 18 years and worked with divorce from 0 to 600 hours per month with a mean of 19 hours. The median population size of the cities in which those professionals practiced was between 100,000-250,000 with 12% over one million and 11% under 20,000. Fifty percent of the respondents had received divorce training in a professional workshop, 45% had conducted self study, 17% received training in graduate school, and approximately one half of the respondents had received no specific training working with divorce. Thirty seven percent of the respondents stated that they had experienced a divorce themselves or their own parents had divorced.

Eighty percent of the respondents recommended that professionals should be trained by attending workshops and seminars. Graduate training and certification were rated second with practice and experience rated third. Written recommendations included mediation training, supervision by other professionals, a call in system, and consulting with clergy. Personal experience such as dealing with their own divorce was also mentioned.

The most common response to the open ended question whether guidelines to define high conflict divorce are needed was to protect children, spouses, and professionals. Procedures validated by research could be established to address high conflict divorce. Prevention of physical and psychological morbidity and mortality might result from required counseling and a court order could be issued to protect those who have already experienced abuse or domestic violence in an attempt to prevent it from recurring. Improved court procedures may result including consultation with specialists, helping discovery, conducting pretrial inquiries, appointing ad litem, and scheduling adequate time for court hearings. Courts could give special attention to high conflict cases prioritizing them on the docket and being more proactive responding to the conduct of the parties including ordering mediation. An interdisciplinary program could be involved and there would be a better opportunity to advocate for children's rights. Prevention measures could be implemented, education of families begun, and children could be given support. Untrained professionals would know when to refer cases and

costs could be reduced. Respondents who did not recommend guidelines believed it is not possible to define high conflict divorce, that it can change over time, and it is already easily determined. Concerns were voiced that the definition could create a self-fulfilling prophecy. The use of the definition could keep couples from seeking help and might be used to try to determine the legal outcome of the case. There was also concern that resources do not presently exist that can deal with high conflict divorce.

The responses to the open ended question about how to stop or reduce psychological abuse of children focused primarily on education of families and professionals, as well as court ordered measures with sanctions imposed quickly if not followed. Removal of the child from danger, including not forcing visitation with an abusive parent, supervised visitation, and limiting joint custody to healthy functioning parents were proposed. Court ordered evaluation of the parent, listening to the children, and appointing a guardian ad litem were mentioned. Deferring to the local office of the Department of Human Services to take responsible measures was proposed. Specific comments included "shoot the parents," "parents act like children-if not disciplined quickly and taught they will continue," and "if a perpetrator is predisposed and has access, none of the above will prevent the abuse. Leopards don't change their spots." Further recommendations included keeping the government out of divorce and requiring preparation for marriage, such as a seminar.

Written suggestions for how professionals should deal with harassment by disgruntled parties were as follows: (1) maintaining careful written documentation, communicating effectively, making no promises, and maintaining impartiality were most frequently recommended to reduce the likelihood of professional harassment; (2) following professional guidelines, educating the public, having unlisted phone numbers and addresses, stopping practice, and changing professions were also mentioned; (3) seeking legal remedies such as the judge's help, litigation, and a nonadversarial court system for divorce were proposed as well as involving multiple professionals, consultation with peers, and seeing both parties; and (4) accepting harassment as part of working with children of divorce were suggested. One respondent proposed to "move to a different country."

Qualified physicians were the only professionals who were viewed as insufficient to assist families in high conflict divorces in the Lickert-type scale responses. This likely reflects a lack of training as residents, which may also be true even in the behavioral sciences. Respondents

also agreed there is a need for special training for all professionals and a lack of meeting the best interests of children in present court procedures. Further beliefs included counseling and/or mediation should be done because the negative impact on the children would be reduced, high conflict divorce and best interests of the child need to be clarified, and most children experience psychological abuse in high conflict divorce.

Although some respondents stated that the "best interests of the child" may not be possible to define or achieve, when asked to write a definition the majority responded this concept includes stability, safety, nurturing, guidance, attachment, and "putting the child first in all decisions." The emotional function of the child was considered paramount as was avoiding parental divorce issues. The child's perspective should be included as well as an understanding of the parents perspective. The process of considering all aspects of the child and the totality of circumstances which affect a child including future considerations was emphasized. Reducing or eliminating contact with a parent who is harmful to a child and placement for primary care with a parent who has strong parenting skills and enhances the other parent's relationship were mentioned frequently. Perhaps this concept was most succinctly described as "that which rational, knowledgeable, loving parents would desire if no divorce were taking place." In truth, the "best interests of the child" may have been best stated—"Parents work out their problems and stay married in a healthy, supportive and encouraging environment."

IV. DISCUSSION

Respondents to this national survey believed that psychological abuse occurs frequently in divorce even when there is no conflict (45%) or low conflict (55%). The frequency rises to 86% when there is high conflict. When sexual and physical abuse are also included, respondents believe that some type of abuse occurs 41% of the time. It is noteworthy that at least half of the respondents said they have had no training specifically to deal with divorce involving children. Special training is recommended for all professions who deal with high conflict divorce, and yet, we are not aware of any requirements for professionals that do this work. Since half of the respondents to the survey said they have no training, many professionals who are working with children in divorce likely have none. There is strong sentiment that divorce counseling should be required for all children (79%) and their parents (83%)

involved in divorce. Professionals proposed court ordered therapy as the best way to reduce psychological abuse of children in divorce. Mediation and restraining orders were then proposed and incarceration of the perpetrator was also frequently supported when psychological abuse occurs. Guidelines to define high conflict divorce (59%) and even more so the best interests of the child (71%) are felt to be needed. The "best interests of the child" is believed to be met in only 70% of the cases in which the responding professionals had been involved in spite of the fact this legal principle is supposed to be used by courts in our country. Since professionals, particularly judges who have the ultimate authority in decisions, determine the outcome of court proceedings, this bothersome statistic indicates that professionals themselves may not be preventing the psychological abuse of the children and may even be contributing to it.

Almost one in five professionals who serve children in divorce, particularly judges, has had a claim or complaint filed against him or her. Complaints to licensing boards are most frequent and complaints to state and federal agencies relatively common. Over half of those against whom a complaint has been filed have also received a verbal or physical threat including professional harm from an attorney. Letters of complaint have been sent to newspapers and colleagues, and an office was picketed. Judges are relatively immune to complaints because of judicial immunity, but other professionals do not have this protection unless under the order of the court. However, all professionals, including judges, pay a high personal price when complaints are lodged maliciously. Malpractice insurance and consultation with an attorney were the most common forms of protection used by professionals. Many professionals are selective in accepting cases or have stopped this work entirely because of the likelihood of complaints. More qualified professionals who truly focus on the best interests of the child may avoid this kind of work thus leaving children in a more vulnerable position. Less than 10% of the professionals attempted to protect themselves by handling court ordered cases only. Since court ordered involvement extends judicial immunity to professionals in addition to the judge, it is surprising that this approach is not more frequently used especially by physicians, social workers, and psychologists. The serious threat that may be felt by professionals who serve children in divorce was highlighted by the respondents who indicated that they have hired a bodyguard, notified police, carried a gun or baseball bat, or relied on an armed bailiff for self protection. The spouses and children in these cases are likely in greater jeopardy than the professionals. The majority

of respondents are unaware if there are enough laws to protect professionals. Likewise, a majority believe that a special panel should review complaints lodged against professionals serving children in divorce because of the complexity of the work which is needed to provide a thoughtful review of a complaint.

Prevention of divorce may be the only way to truly meet the "best interests of the child." Human nature will not likely ever make this a reality. Many practical and logical proposals were made frequently by survey respondents including termination of parental contact when necessary to keep a child physically and emotionally safe. In reality, the concept of "best interests of the child" may be unclear because clarifying the definition would interfere with parental or other adult's "rights."

Although respondents reflected a cross section of professionals by age, sex, size of community and national location as well as years of professional work and hours devoted to divorce work, only 33% of the questionnaires were returned which is typical for this type of survey but may skew the results. Assuming that respondents would likely have more personal and professional experience with divorce, especially high conflict, and thus may have a personal agenda, responses regarding the stress of divorce such as psychological abuse may be higher than would be found from a general population of professionals. The respondents did seem to reflect the norm with only 37% having experienced a personal divorce or that of their parents and approximately 33% not working professionally in divorce. No attempt was made to determine if perceptions differed by profession or location, which might have revealed different responses.

V. CONCLUSION

The survey suggests there are multiple things which need to be addressed when children are involved in divorce. Frequent psychological abuse of children regardless of the degree of conflict may be the most important. The legal concept of the "best interests of the child" commonly does not result from court decisions and the concept needs to be further defined. Procedures are needed to ensure that the "best interests of the child" are met. The concept of high conflict divorce needs further clarification and professionals who work with high conflict divorce should receive special training. Laws are needed to protect professionals who serve children in high conflict divorce from harassment and special procedures particularly professionals who are

pecially trained are needed to address complaints when they arise during high conflict divorce. The survey supports the need for and importance of a national conference to focus on the topic of divorce involving children, especially when there is high conflict, to better serve the child of embattled divorce.

APPENDIX I

QUESTIONNAIRE ON PROFESSIONALS PERCEPTIONS OF DIVORCE
(Please fill in blanks, circle answers, or check where appropriate)

Part I. Please indicate the city and state in which you practice: _____

Please indicate your: Age _____ Gender (1) Male (2) Female

- 1. What is your highest degree?
(1) M.D. (2) Ph.D. (3) JD (4) SW (5) other _____

What is your title? _____

Please describe your position _____

- 2. How many years have you been practicing your current profession? _____ years

- 3. What is the size of the area in which you currently practice?
(1) 0-5000 (3) 10,000-20,000 (5) 50,000-100,000 (7) over 250,000
(2) 5000-10,000 (4) 20,000-50,000 (6) 100,000-250,000 (8) over 1,000,000

- 4. Have you received specific training to handle divorce cases? (1) Yes (2) No

Please describe the divorce training you have received (you may choose more than one)

- (1) Graduate school course (3) Self-study (5) Other _____
(2) Professional workshop (4) Work experience only

- 5. In your opinion, how should professionals be trained to work in high conflict divorces? (Please indicate your preference: 1=first choice; 2=second choice; 3=third choice, etc.)

- ___(a) Graduate training/certification ___(c) Attending workshop/seminars
___(b) Practice/experience ___(d) Self-directed study
___(e) Other (please specify) _____

- 6. In your opinion, approximately how many professionals in each category in your area have the experience or training to deal with high conflict divorce? (Please check)

Table with 4 columns: (a)Physician, (b)Behavioral, (c)Attorney, (d)Judge and 6 rows of response options from (1)Less than 5 to (6)don't know.

- 7. Should "divorce counseling" be required prior to parents entering divorce court for
Parents? (1) yes (2) no (3) don't know
Children? (1) yes (2) no (3) don't know

- 8. How many hours a month do you spend with families related to divorce? _____ hours

9. Out of all divorce cases you see, what percent would you consider to be high conflict as opposed to low conflict or no conflict?
 ___% High Conflict ___% Low Conflict ___% No Conflict (total should be 100%) ___ don't know

10. Should guidelines be set to identify whether a divorce is high conflict? (1) yes (2) no
 Why? _____

11. Do you think children experience psychological abuse during divorce?
 No conflict divorce (1)yes what % _____ (2) no (3) don't know
 Low conflict divorce (1)yes what % _____ (2) no (3) don't know
 High conflict divorce (1)yes what % _____ (2) no (3) don't know

12. If you have been professionally involved in divorce cases, what percentage do you believe involved physical, psychological, or sexual abuse of the child(ren)? _____% (1) not involved

13. What methods or precautions can be taken to stop or reduce the psychological abuse that some children face in high conflict divorce cases? (Please prioritize: 1=first choice, 2=second choice, etc.)
 ___a. Court ordered therapy ___c. Restraining order
 ___b. Incarceration of perpetrator ___d. Require mediation
 ___e. Psychological abuse does not occur in high conflict divorce cases ___f. Don't know
 ___g. Other _____

14. In your own words, please describe what the "best interests of the child" means in the context of divorce.

 (1) don't know

15. The standard that courts use for decision making in divorce involving children is "the best interests of the child." Based on your professional experience, in what percentage of cases is this principle followed by the court? ___% (1) not involved

Do guidelines need to be developed for judges to clearly decide "the best interests of the child"?
 (1) yes (2) no, they already exist (3) not needed

16. Have you ever had a legal claim or professional complaint against you regarding your handling of a divorce case?
 (1) yes (2) no (3) not involved

Please check all that apply
 ___(1) Complaint to licensing board ___(4) Verbal or physical threat
 ___(2) Malpractice suit ___(5) Complaint to federal or state agency
 ___(3) Complaint to employer ___(6) Criticism of work to patients/clients
 ___(7) Other _____

- 17. Do you think professionals who are serving the children in divorce can protect themselves from professional harassment? (1) yes (3) to some extent
(2) no (4) don't know

Please check all steps you have taken to protect yourself

- (1) Consult an attorney
- (2) Have malpractice insurance
- (3) Stopped accepting cases
- (4) Handle only court ordered cases
- (5) Hire a body guard
- (6) Selectively accepted cases
- (7) None
- (8) Other _____

Please list any additional steps which professionals could take to help protect themselves from professional harassment _____

Do you think a special panel or committee should be formed to review complaints or legal claims against professionals handling divorce cases? (1) yes (2) no (3) don't know

Are there presently enough laws to protect professionals involved in high-conflict divorce? (1) yes (2) no (3) don't know

- 18. Have you or your parents had a divorce? (1) yes (2) no

Part II.

Please circle the numerical rating that best describes your opinion for each statement below.

1-----2-----3-----4-----5
 Strongly Disagree No Opinion Agree Strongly
 Disagree Agree

- 1. There are enough qualified professionals to assist families in high conflict divorces
 - Physicians.....1 2 3 4 5
 - Behavioralists1 2 3 4 5
 - Attorneys1 2 3 4 5
 - Judges1 2 3 4 5
- 2. The courts almost always decide in the best interest of the child.....1 2 3 4 5
- 3. There are enough laws/legislation which protect professionals from harassment doing good work in high conflict divorce
 - Physicians1 2 3 4 5
 - Behavioralists1 2 3 4 5
 - Attorneys1 2 3 4 5
 - Judges1 2 3 4 5
- 4. Professionals dealing with high conflict divorce should have special training and certification
 - Physicians1 2 3 4 5
 - Behavioralists1 2 3 4 5
 - Attorneys1 2 3 4 5
 - Judges1 2 3 4 5
- 5. Procedures which presently exist insure the best interests of the child in high conflict divorce.....1 2 3 4 5
- 6. All families with children going through divorce should undergo counseling or mediation prior to court1 2 3 4 5

- 7. Counseling helps parents reduce the negative impact of divorce on their child..... 1 2 3 4 5
- 8. Guidelines should be set to identify whether a divorce is high conflict..... 1 2 3 4 5
- 9. Guidelines need to be developed to clearly define "the best interests of the child"..... 1 2 3 4 5
- 10. Most children involved in high conflict divorce experience psychological abuse..... 1 2 3 4 5
- 11. A special panel or committee should be formed to review complaints or legal claims against a professional handling divorce cases 1 2 3 4 5

Part III.

Please note the new numerical rating being used and then circle the number which best describes your opinion for each statement below.

1-----2-----3-----4-----5
Well Below Below Average Above Well Above
Average Average Average Average

- 1. How would you rate the overall qualifications of procedures used by professionals having involvement with high conflict divorce in your state?
 - Physicians 1 2 3 4 5
 - Behavioralists 1 2 3 4 5
 - Attorneys 1 2 3 4 5
 - Judges 1 2 3 4 5
- 2. How would you rate the courts in your locale in meeting "the best interests of the child" principle in high conflict divorce? 1 2 3 4 5
- 3. How would you rate the legal protection of professionals in your locale who are attempting to serve children in high conflict divorce? 1 2 3 4 5
- 4. How would you rate your overall knowledge and experience in dealing with high conflict divorces? 1 2 3 4 5
- 5. How would you rate the protection of children who experience psychological abuse in high conflict divorce in your locale? 1 2 3 4 5

Thank you for helping in the effort to understand the needs of children and families undergoing divorce.

