

TEN WAYS TO DETECT AND ADDRESS LITIGATION ABUSE



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When divorce and custody cases drag on with endless motions, it is easy to assume that we are working with a “high conflict divorce.” However, this label may miss litigation abuse dynamics.

Sometimes, one party aims to dominate their ex-partner in any way they can. That person will try to use the court system—and those of us who work in tandem with the courts--to abuse their ex-partner. Litigation abuse allows someone with greater access to money to maintain power and control over their ex-partner into the post separation period, through the courts. This abuse can last more than a decade.

If we misclassify a case where there is a lot of conflict and litigation as “high conflict,” we are effectively labeling both parties similarly when only one party is at fault. This creates false equivalencies. We help judges understand the true dynamics when we indicate that one party is using litigation to abuse the other.

When court-involved professionals are aware of a blatant effort by one party to use professionals to perpetuate ongoing, unnecessary litigation designed only to harm the other party - it is important that that the professional take a stand, when appropriate. For example, an attorney could decline to file unnecessary motions. Or a parenting coordinator could inform the court that only one party is obstructing progress. In our reports, we can detect and should point out when a case is—in fact—characterized by litigation abuse.

The chart below can help you distinguish between “High conflict divorce” and “Litigation abuse.”

Behaviors That Differentiate “High Conflict Divorce” from “Litigation Abuse”	
High Conflict Divorce	Litigation Abuse
<i>Symmetrical & parallel escalation of conflict</i>	<i>One party is unilaterally drawn to conflict and escalates conflict</i>
<i>Both parties engage in “discovery abuse”</i>	<i>One party engages in “discovery abuse,” for instance by demanding irrelevant sensitive records, using discovery to harass or wear down their ex-partner, unnecessarily delaying discover, or burying their ex-partner with thousands of pages of irrelevant documents</i>
<i>Both parties appeal orders without a legal basis</i>	<i>One party appeals orders without a legal basis</i>
<i>Both parties initiate abusive court processes</i>	<i>One party initiates abusive court processes. (The other party may seek redress for legitimate grievances)</i>
<i>Both parties sabotage the legal process</i>	<i>One party sabotages the legal process</i>
<i>Both parties make every decision as difficult as possible</i>	<i>One party makes every decision as difficult as possible</i>

When we fail to recognize that one party is using the courts as their playground for litigation abuse, we may make erroneous recommendations. Suggestions that imply a joint or cooperative path to “work things out” such as mediation, using a parenting coordinator, parallel parenting, or shared legal custody will likely not work when one partner seeks to dominate the other. We should recommend alternatives. ([Jaffe et al, 2023](#), describe criterion to use to determine when to recommend co-parenting, parallel parenting, supervised exchanges, supervised access, or suspended contact).

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Here are ten ways to avoid letting an abusive litigant mislead you:

- 1) **Use structured interviews with open-ended questions, where possible.** (Having a consistent practice within and between cases helps stave off bias. Open ended questions beginning with “tell me” or “please explain” will prompt interviewee to say more).
- 2) **Keep control and maintain a balanced process.** (Do not grant exceptions to your usual process to one parent only; you risk being manipulated and you may appear to have been manipulated).
- 3) **Conduct repeated interviews and relatively long interviews,** if necessary. (This helps you detect inconsistencies across interviews).
- 4) **Ask for accounting about discrepancies in the record.** (If a party contradicts the record, ask about the inconsistencies and ask for proof of their assertions, where available).
- 5) **Maintain clear boundaries.** (One party may seem charming and invite you on a fishing trip with the children or out to a restaurant meal. One party may always hand you a latte. Accepting special gifts and favors would introduce bias into your relationship).
- 6) **Document all refusals and cancellations.** (If one party refuses to fill out paperwork or delays completing their part, misses a meeting, or is uncooperative, be sure to document this in your report).
- 7) **Make sure your process is balanced.** You should be spending the same amount of time with each party and meeting in the same way. (For example, do not hold virtual meetings with one party and in-person meetings with the other).
- 8) **Look for patterns of behavior before and after separation.** (Determine who has been the primary parent over time, not just shortly before and since separation. Explore evidence of abuse and control by one parent over time. Note if one party says they intend to financially drain their ex-partner for legal advantage, or appears to be doing so).
- 9) **Hold similar expectations.** (Sometimes people hold a low bar for fathers and a much higher bar for mothers (Mandel, 2024). The parenting expectations should be similar if parenting time allocation is in question).
- 10) **Avoid recommending joint decision-making if this is impossible.** (Where parents cannot make decisions jointly, decision-making should be assigned to the parent who has acted more responsibly over time. This will avoid returning to court for each and every small decision for years).

We tend to assume that both parents are acting in the child’s best interest, but this may not be true. Abusive partners may look great on the surface. They may be charming, have a nice home, and say the right things. However, at the very same time, they may be more motivated to harm the child’s other parent than to protect their children’s well-being. This has been termed [spiteful disregard](#).

Clearly labeling one party as engaging in litigation abuse, where applicable, will help the judge make sound decisions about the children’s best interests.

- **Lisa A. Fontes, PhD**, is an internationally known expert on coercive control, child abuse, intimate partner abuse, and sexual violence. She has been qualified in eighteen states as an expert witness in family, civil, and criminal court on a range of cases concerning trauma, coercive control, best interests of the child, sexual violence, domestic abuse, child abuse, child development, sexual harassment, and related topics. She is a Senior Lecturer at the University of Massachusetts Amherst in the Department of Interdisciplinary Studies. Newly active in AFCC, Dr. Fontes headlined a New Jersey AFCC conference and presented twice at the AFCC national conference in 2024 on topics related to post-separation abuse and litigation abuse. Dr. Fontes writes for publications including [Domesticshelters.org](#) and [PsychologyToday.com](#), where she has had more than two million readers. *See Citations on Page 10.*

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-**Julian Santos**, Head Law Librarian at the Lowell Law Library



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Fontes, L.A. & Adams, D. (1/8/2024). [Counter-parenting: Spiteful disregard in post-separation abuse](#). Domesticshelters.org.
 Gutowski, E. R. & Goodman, Lisa. A. (2023). Coercive control in the courtroom: The Legal Abuse Scale (LAS). *Journal of Family Violence*, 38, 527-542.
 Lockman, D. (5/4/2019). What ‘good’ dads get away with. *The New York Times*.
 Lockman, D. (2019). *All the rage: Mothers, fathers, and the myth of equal partnership*. Harper.
 Mandel, D. (2024). *Stop blaming mothers and ignoring fathers*. Legitimus Media.

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