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Invisible Chains

It's Post-Separation Legal Abuse, Not High Conflict Divorce

Abusers torment their exes through the courts in a form of coercive control.

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KEY POINTS

- Domestic abusers often exert control over their ex-partners through the legal system.
- Post-separation legal abuse takes a tremendous psychological toll on victim-survivors and children.
- The legal system often mistakes legal abuse for "high conflict divorce."

Co-authored with Christine Cocchiola, LCSW.

When abusers use the courts to harass their ex-partners, judges sometimes consider "the couple" as the problem, failing to identify the legal maneuvers as a form of continued abuse.

Guardians ad litem, custody evaluators, and judges often mistakenly identify custody disputes involving a domestic abuser as "high conflict divorces." The term "high conflict divorce" suggests symmetrical and parallel escalation from both parties. However, in most "high conflict" divorce cases, what we are really seeing is one "party who is drawn towards, rather than away from, conflict" (Rosenfeld et al., 2019).

These cases are marked by one “high conflict litigant” who exerts power by dragging their ex into court repeatedly. In other words, an abuser creates a series of court complications to make a divorce or custody case impossible to resolve, so it continues for years. The problem is not the couple—the problem is one member of the couple and should be handled accordingly. The abuser wants the case to drag on, relishing these opportunities to continue to make the ex-partner suffer.



Source: Ekaterina-Bolovtsova/Pexels

This coercive control tactic is variously called legal abuse (Douglas, 2018), vexatious litigation (Fitch & Easteal, 2017), procedural abuse (Miller & Smolter, 2011), judicial terrorism (Tucker, 2021), and custody stalking (Elizabeth, 2017). Domestic abusers act the role of a loving and caring parent who wants to have half-time or more with their children when their true goal is to maintain a continuous route for harassing their

ex-partners.

Frequently, the domestic abuser creates a false (gaslighting) narrative that the other parent should lose much or all of their parenting time because they are “mentally unstable.” The domestic abuser may also allege that the targeted parent is trying to undermine the role of the domestic abuser in the children’s lives and raise the specter of “parental alienation.”

The National Council of Juvenile and Family Court Judges noted that “it is often legitimate for the partner of an abusive parent to try to protect the children from exposure to abuse, or to try to secure his or her own safety from the abusive partner by limiting that partner’s contact with the children” (p. 19).

The abuser retains or regains control by bringing the victim back to court repeatedly. Each day in court takes a tremendous toll on the victim in lost wages and lawyer’s fees. Victims of domestic abuse have often already suffered from financial abuse. The court battle may stretch them financially beyond the breaking point, forcing them and the children to move into a shelter or even—sometimes—return to the abuser.

Psychologically, the stress of prolonged court battles can be devastating to the protective parent and to the children (Clements et al., 2021).

Calling domestic abusers “master manipulators,” Campbell (2017) makes the following recommendations to judges:

1. Find the abuser in contempt upon the very first failure to pay child support or in some other way conform to the terms of a court order-- thus averting the need for repeated court hearings.
2. Become familiar with abuser profiles and patterns of domestic violence to detect these more easily when they appear in court.
3. Watch vigilantly for signs of abuse throughout the court and mediation processes.
4. Sanction abusers who file frivolous motions.
5. Be wary of granting custody or visitation to abusers. Where such contact is granted, structure agreements to reduce the need for contact between the parties.

These steps would go a long way to protect victim-survivors who suffer from post-separation legal abuse. The courts should protect someone who has endured **coercive control** within their relationship rather than extending the abuser's reach after separation.

References

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About the Author



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FAMILY

HOW DOMESTIC ABUSERS WEAPONIZE THE COURTS

After a breakup, litigation is often a way for harassers to force their victims to keep seeing them.

By Jessica Klein

Family court tends to attract newer judges. The job offers less prestige and a higher case volume. “Therefore, you have judges with little or no experience trying to afford due process to people, without the understanding of the way courts can be used to further abuse victims,” says Carroll Kelly, the administrative judge of the Miami-Dade courts’ domestic-violence division.

Courts tend to be overburdened with cases—“especially family court,” Moy says. The judge in D’s case often has to cut short proceedings because her docket is overwhelmed with other cases. “I think we got 45 minutes or half an hour worth of trial last time we were at court,” Moy told me in September. “I would say we have at least an hour more of D’s testimony [that we didn’t have time to share].”