MODIFYING THERAPEUTIC INTERVENTION TO BETTER SERVE VICTIMS OF DOMESTIC VIOLENCE IN MARICOPA COUNTY SUPERIOR COURTS

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Domestic Violence & the Law — December 2011 — Professor Sarah Buel

ABSTRACT

Therapeutic intervention, as it is used in Maricopa County Superior Courts, refers to a multifarious array of mental health treatments designed to repair the relationship between an estranged parent and child after a divorce or separation. In many cases, therapeutic intervention is being used ineffectively or detrimentally, especially so in families with a history of domestic violence. To ensure that therapeutic intervention advances the best interests of children while protecting victims’ safety, I recommend that (1) the Maricopa County Superior Court study the practice of therapeutic intervention and re-examine the philosophy behind it, (2) judges and TIs (“TIs”) receive training in the appropriate use of therapeutic intervention in domestic violence cases, and (3) Ariz. Rev. Stat. § 25-405 be amended to constrain the practice.

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   I. INTRODUCTION

Since 1996, officials within the Maricopa County Superior Court have utilized
therapeutic intervention, a mental health practice, to attempt to reunite estranged or alienated
parents with their children. Prompted by mental health professionals outside the family court
system, family court judges use court-appointed mental health professionals to counsel families,
and to report back to the court their results and recommendations for future contact between
children and parents. Estrangement and alienation are particularly complex problems, and are
even more difficult to resolve when family dynamics include domestic violence. This paper
focuses on the theories and practice behind therapeutic intervention as it exists in Maricopa
County, Arizona. It explores the problem that therapeutic intervention seeks to solve, and elucidates the different methods of therapeutic intervention. It identifies and explains the problems caused by its inappropriate use in families with a history of domestic violence, and identifies possible means for improvement.

II. BACKGROUND

A. The Purpose of Therapeutic Intervention

Therapeutic intervention is designed to repair the relationship between a parent and an estranged or alienated child. However, significant controversy exists over how and why relationships between parents and children sour, and who is to blame. Intervention methods are influenced by, if not grounded in, the type of problem courts and interveners seek to address and the reason they believe the problem is occurring. Thus, it is critical that judges and interveners firmly root their practice of therapeutic intervention in sound psychological and empirical premises. This section explores the philosophies associated with alienation and estrangement.

Most professionals agree that children occasionally and naturally develop an affinity toward one parent for a variety of normal reasons, including temperament, age, gender, familiarity, amount of time spent with parents, or shared interests. This affinity may shift between parents, and is developmentally appropriate. However, in the context of divorce and parental conflict, affinities can become concerning to both the aligned or preferred parent, that is, the parent for whom the child displays preference, and the rejected parent, or the parent whom the child is resisting. The aligned parent might conclude, correctly or incorrectly, that the rejected parent has done something objectionable to the child to cause the rift, while the rejected parent might feel that the preferred parent is attempting to alienate the child.

There are many reasons that a natural, ebbing affinity might become pronounced, or conversely, might develop into alienation through the unilateral actions of a parent. Many social scientists agree that alienation and estrangement is a real concern, faced predominantly by

1 See Lynne Kenney Markan and David K. Weinstock, Expanding Forensically Informed Evaluations and Therapeutic Interventions in Family Court, 43 FAM. CT. REV. 466, 467 (2005).
3 Id. (“This normal and developmentally expected ebb and flow of preferences (affinity) and gender identification occurs in both divorce and nondivorced families, and is not the result of an alienation process.”).
4 Id.
5 Id.
6 Id. (citing Joan B. Kelly and Janet R. Johnston, The Alienated Child: A Reformulation of Parental Alienation Syndrome, 39 FAM. CT. REV. 249, 252–55 (2005) (paraphrasing the reasons Kelly and Johnston identify as contributors to affinity, estrangement, and alienation as including: “(1) alienating behavior and motivation of the aligned parent; (2) the rejected parents’ inept parenting and counter-rejecting behavior (before or after the rejection); (3) domestic violence/abuse and child abuse/neglect; (4) chronic litigation that typically includes “tribal warfare” (involvement of family, friends and new partners); (5) sibling dynamics and pressures; (6) a vulnerable child (dependent, anxious, fearful, emotionally troubled and with poor coping and reality testing); and (7) developmental factors (e.g., age-appropriate separation anxiety, response to separation or conflict consistent with the cognitive development of children aged 8 to 15 years)”).
families going through a high-conflict divorce. However, the characterization and treatment of alienation is complicated by the infusion of political controversy. Some fathers’ rights groups have argued that mothers make false accusations of abuse and purposefully alienate their children in an effort to spite their exes or win a custody battle. In the 1980s, Richard Gardner, widely believed to be aligned with an extreme wing of the fathers’ rights movement, coined the term Parental Alienation Syndrome (“PAS”) to refer to “a disorder that arises primarily in the context of child custody disputes,” characterized by a “child’s campaign of denigration against a parent, a campaign that has no justification, [which] results from the combination of a programming (brainwashing) parent’s indoctrination and the child’s own contribution to the vilification of the target parent.” Gardner claimed that most abuse claims made in custody litigation are false, and that when a child rejects his/her father and the mother alleges abuse, it is more likely that the mother has deliberately alienated the children from their father, and should thus be disbelieved. PAS has been discredited by many social science experts as an overly-polarizing theory that is not recognized as a syndrome by any authority, tends to be biased against women, and fails to capture all of the dynamics associated with alienation. Anti-violence advocates have appropriately decried the theory as a mechanism for legitimating abuse and refuting the genuine claims of abused mothers.

Although controversy persists in some circles over whether members of one gender disproportionately “perpetrate” parental alienation, as stated above, most experts agree that estrangement and alienation are real problems amongst some divorcing and separating families.

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13 See supra note 6. See also Fidler & Bala, supra note 2, at 11 (2010) (“A minority, between 11 and 15 percent, of children from community samples of divorcing families have been found to reject or resist contact with one parent while remaining aligned with the other parent. Estimates of alienation are higher in custody-disputing samples, with some studies reporting about one-fifth, and others reporting as high as 40 percent of children exhibiting an alignment with one parent. In one study of highly conflicted custody-disputing families, Johnston and her
However, these authors distinguish between realistic estrangement and alienation. Realistic estrangement refers to cases in which the child’s resistance to the other parent naturally results from trauma, such as witnessing domestic violence or experiencing physical or sexual abuse, or from negligent or inept parenting. Conversely, alienation refers to a condition in which “the child’s resistance or rejection is primarily, though not always exclusively, the result of the alienating parent’s conduct, conscious or unconscious, subtle or obvious, direct or indirect.”

Experts argue that it is unproductive and harmful to children to focus on overly simplistic and politically polarizing theories, such as PAS. Instead, they emphasize the importance of recognizing that “this is not an either/or proposition; there are abused children and there are alienated children” (emphasis added). Understandably, experts recommend different treatment and judicial remedies, depending on whether it is alienation or realistic estrangement that is at issue. However, they also acknowledge that there are considerable degrees of overlap in types of cases, and that, in many cases, there are elements of both purposeful alienation and deserved estrangement, “making proper ‘diagnosis’ and intervention planning extremely challenging.”

In examining the practice of therapeutic intervention in Maricopa County family courts, it is critical to understand the wider context in which alienation and estrangement exist. Professionals and participants in the family court system must critically examine the presumptions espoused by family court actors about the cause of estrangement and alienation. Judges and TIs must espouse an unbiased approach to this issue. Without the ability to clearly differentiate between alienation and realistic estrangement, their prescriptions may be tainted and thus ineffective, if not harmful.

B. Types of Therapeutic Intervention

Therapeutic intervention refers to several different types and methods of treatment used in a court setting. It is therefore sometimes referred to as “forensically-informed treatment,” meaning psychological treatment that pertains to or is used in courts of law. The nomenclature associated with therapeutic intervention can be confusing because, despite its name, therapeutic intervention is an umbrella term which encompasses two types of treatment: evaluation and intervention. Evaluation refers to a method of data-collection and assessment, undertaken at the inception of a case, or after a pivotal development in a case, and is designed to provide information to the court about a critical question. Conversely, intervention refers to a

14 Id. at 15.
15 Id.
16 Fidler & Bala, supra note 2 at 16.
18 Fidler & Bala, supra note 2 at 11.
19 Id. at 15 (“With more research and experience, legal and mental health practitioners have noted that pure or “clean” cases of child alienation and realistic estrangement (those that only include alienating behavior on the part of the favored parent or abuse/neglect on the part of the rejected parent, respectively) are less common than the mixed or “hybrid” cases.”).
20 Fidler & Bala, supra note 2 at 15.
22 Id.
23 See Markan and Weinstock, supra note 1 at 466–67.
24 Id.
circumstance in which a court has identified a problem, and seeks to use a court-appointed professional, that is, a therapeutic clinician, to help the parties solve their problem. Therapeutic intervention encompasses several methods of evaluation and intervention, described below.

Considerable professional and ethical implications apply when a court orders one person to both evaluate and provide therapeutic services. Here, the TI has the authority to both provide therapy to parties who are usually adverse to one another, and/or their children, and to evaluate those parties and make recommendations to a judge which implicate their litigation interests. This will be explored more fully in Part III.F.

1. Types of Evaluation in Maricopa County
   a. Comprehensive Evaluation
   
   Comprehensive evaluation is designed for high-risk family relationships afflicted with complex behavioral health issues, such as domestic violence, substance abuse, mental illness, child abuse, abduction, or severe parental polarization, and is a preliminary assessment of the issues present. As its name suggests, comprehensive evaluation is broad in scope and methodology, and, depending on the circumstances, may include clinical interviews, psychological testing, home visits, parent-child observations, and collateral interviews. The report generated through a comprehensive evaluation often addresses mental status issues, psychiatric symptoms, behavioral reporting, parental competency, and a data-based analysis of the likely veracity of a parent’s allegations or concerns. Often, the complexity of the case demands that multiple professionals cooperate to provide an evaluation. It is generally lengthy and costly.

   b. Emergency Case Stabilization
   
   Emergency case stabilization (“ECS”) is used to stabilize potentially dangerous circumstances and to make rapid referrals for acute, immediate treatment. It is indicated where there is chaos in a family, such as allegations of domestic abuse, and the court needs a rapid assessment of a critical issue prior to making temporary orders. It is “an appropriate response to serious allegations made in an emergency hearing, so that the court can conduct measured,

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25 Id.
27 Markan and Weinstock, supra note 1 at 469.
28 Id. at 468.
30 Id.
31 Id. When a comprehensive evaluation is undertaken to determine which party should have custody, the evaluation is authorized under ARIZ. REV. STAT. § 25-406, which permits the court to order an investigation and report concerning custodial arrangements.
32 Markan and Weinstock, supra note 1 at 471 (2005).
33 Id.
thoughtful, and informed decision-making.”34 After evaluation, the professional makes recommendations for further evaluation, intervention, or treatment.35

c. Other Types of Evaluation: Problem-Focused Evaluation, Dispute Assessment, Child Developmental Evaluation, and Child Forensic Interview

Problem-focused evaluation is indicated in mid-risk scenarios, and is designed to address a pressing issue that requires examination and a well-founded expert opinion, such as divorcing parents’ conflict over school placement for their child.36 Dispute assessment is used in low-risk scenarios to evaluate statutory-based issues, such as the wishes of the child or parent, use of coercion, mental and physical health, and a child’s adjustment to his/her new home.37 Child developmental evaluations provide the court and parents with information necessary to make informed child-centered custody and parenting-time decisions, and include an examination of the a child’s cognitive, developmental, behavioral, physical, academic, social, athletic, and temperamental skills.38 A Child Forensic Interview is generally a videotaped interview used to answer a judge’s specific questions.39

Figure One

of Intervention in Maricopa County

This paper will focus predominantly on therapeutic interventions, and specifically, therapeutic reunification, as this is the most oft-used method, and the one which raises the most concerns among judges, parties, and victims’ advocates.40 Figure One, above, illustrates the three types of therapeutic interventions, and their relationships to one another. As displayed above, and further detailed in this section below, therapeutic reunification is intended to be ordered in cases where contact with the parent presents little risk to a child. Conversely,

34 Id.
35 Id.
36 Id. at 469.
37 Id. at 470. Dispute assessments are generally brief and non-exhaustive evaluations.
38 Id.
39 Id. at 471.
40 Forensically informed treatment is one type of intervention discussed by Markan, but which is not discussed in great detail here because few judges seem to use it. Markan describes it as therapy that the “clinician approaches . . . with clear parameters,” which define how the clinician accepts the case, determines the appropriate method of treatment and his/her role within treatment, and communicates with the judge, parties, and attorneys. It is unclear to the author how this type of treatment differs in any measurable respect from other types of therapeutic intervention, because it is recommended that other types of treatment have clear parameters, and because sample orders for forensically informed treatment do not contain stipulated roles for the clinician, and do not differ from orders for other types of therapeutic intervention. See DAVID WEINSTOCK AND DIANA VIGIL, BENCH BOOK: SAMPLE COURT ORDERS TO APPOINT MENTAL HEALTH PROFESSIONALS 63–64, available at http://fcande.com/presentations/ (to access, scroll down to “October 2008” and click on “Download Sample Court Orders”) (last accessed November 18, 2011).
therapeutic supervised visitation is ordered when it is unsafe for a child to be left alone with a parent.

a. **Therapeutic Reunification**

Therapeutic Reunification is a series of treatments aimed at facilitating a renewed relationship between an alienated or estranged parent and child.\(^{41}\) It is appropriate when the court has made findings of fact or law indicating that the parent poses no substantial danger to the child, and when the court has ordered unsupervised access to resume.\(^{42}\) Therapeutic reunification is characterized by progressive contact.\(^{43}\) The parent and child often initially meet in the TI’s office, and then, “assuming minimally adequate parenting skills and a non-symptomatic response on the part of the child,” the parent and child gradually begin to engage in out-of-office, unsupervised visits, which eventually culminate in instatement of the court-ordered ultimate custody schedule.\(^{44}\) It is critical for the court to establish a reunification plan prior to the initiation of the intervention so that the TI is not required to design a schedule, which may engender hostility towards him/her from the parents, or give the parents an incentive to lobby for a particular schedule.\(^{45}\) These interventions are typically lengthy, ranging from five months to one year.\(^{46}\)

It is normal for one parent to resist reunification, while the other parent advocates it.\(^{47}\) In these cases, therapeutic reunification is “aimed at rebalancing the perceptions of the alleging parent,” as well as improving the parenting skills of the alienated parent, observing the children’s’ reactions to the parent, and facilitating an improved co-parenting plan.\(^{48}\)

b. **Therapeutic Re-contact**

Therapeutic re-contact is designed for more critical family relationships in which there is a documented history of neglect, physical or emotional abuse, incapacitating mental illness, or substance abuse on the part of a parent.\(^{49}\) It, too, is to be employed only after a parent has participated successfully in a treatment program and the court has issued findings of fact and conclusions of law indicating that the parent does not currently pose a substantial risk to the child.\(^{50}\) Therapeutic re-contact is carried out in a more closely monitored and restrictive environment than reunification. Therapeutic re-contact clinician should be licensed behavioral health professionals with training in child abuse, trauma, adult psychopathology, offender dynamics, and family therapy.\(^{51}\) Because significant rehabilitation of the parent is necessary prior to intervention, therapeutic re-contact is often more lengthy than therapeutic reunification.\(^{52}\) The clinician’s role is to facilitate renewed contact, likely in a supervised fashion, between family members.\(^{53}\)

c. **Therapeutic Supervised Visitation**

\(^{41}\) Id.
\(^{42}\) Id. at 472.
\(^{43}\) Id.
\(^{44}\) Kenney and Vigil, *supra* note 21 at 650.
\(^{45}\) Markan and Weinstock, *supra* note 1 at 472.
\(^{46}\) Id.
\(^{47}\) Id.
\(^{48}\) Kenney and Vigil, *supra* note 21 at 650.
\(^{49}\) Markan and Weinstock, *supra* note 1 at 473.
\(^{50}\) Id.
\(^{51}\) Id.
\(^{52}\) Id.
\(^{53}\) Id.
Therapeutic supervised visitation is generally employed after therapeutic re-contact or reunification have proven unsuccessful, and/or when the clinician has reason to doubt the child’s emotional or physical safety in the parent’s presence.54 It is the most restrictive level of intervention, and is employed “to meet the protective and safety needs of a child rather than to meet the needs of parents.”55 In this role, a clinician may monitor children’s symptoms, teach age-appropriate parenting skills, and perform court-mandated monitoring functions.56

C. Origins of Therapeutic Intervention in Maricopa County Superior Court

1. Statutory Authority for Therapeutic Intervention

The courts’ authority to assign therapeutic intervention is found in ARIZ. REV. STAT. § 25-405(B), which states:

The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and shall be made available by the court to counsel, on request, under such terms as the court determines. Counsel may examine as a witness any professional personnel consulted by the court, unless that right is waived.57

This law was added in 1973.58 Little substantive legislative history is available for this statute; however, it appears unlikely that the statute was written with the specific purpose of authorizing therapeutic intervention. Instead, it seems probable that advocates of therapeutic intervention—who did not begin promoting the concept in Arizona until the late 1990s—sought out a statute that, by its terms, could conceivably authorize the practice. Indeed, the language of the statute seems to permit the court only to seek advice of professional personnel, and does not explicitly authorize the use of mental-health professionals in a psychotherapeutic or forensic sense.

2. The Work of Lynne Kenney Markan, David Weinstock, and Diana Vigil

Therapeutic intervention, as it currently exists in Maricopa County Superior Courts, does not seem to have originated by legislative command, as discussed above. Instead, it began, predominantly, through the publication of two articles and one judicial bench book by three professionals trained in law and psychology.59 In 1996, Markan and Vigil introduced therapeutic intervention in an article that advocated for the expansion of the roles of mental health

54 Kenney and Vigil, supra note 21 at 651.

55 Id.

56 Id. at 669.

57 ARIZ. REV. STAT. § 25-405(B) (West, Westlaw through the First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).


59 Kenney and Vigil, supra note 21; Markan and Weinstock, supra note 1; LYNNE KENNEY MARKAN AND DAVID WEINSTOCK, BENCH BOOK FOR THERAPEUTIC INTERVENTIONS IN FAMILY COURT, available at http://www.azafcc.org/pdfs/benchbookAFCV21.pdf (last accessed Nov. 16, 2011). Markan is a co-author of each of the three works, and is joined in her work twice by Weinstock and once by Vigil. Markan holds a Psy.D. from Pepperdine, and completed a post-doctoral fellowship in clinical-forensic psychology at Massachusetts General Hospital/Harvard Medical School. Weinstock is a licensed psychologist and a licensed attorney. Vigil is a licensed professional counselor. All are based in Phoenix, Arizona, and all have been involved in training either judges or counselors on therapeutic intervention, in some cases, as recently as 2011.
professionals in family court to remedy the “current worldwide state of ‘crisis’ in domestic relations court.”60

In the 1996 article, Kenney and Vigil clearly delineate the proper confines of the TI’s role.61 They emphasize the professional and ethical concerns inherent in providing a therapeutic service within a litigious context, and make clear that though a therapist may be prescribed by the court, the therapist should not serve as an expert for the court.62 They suggest that a clinician develop a “position statement” for outlining the boundaries of appropriate involvement, which would include language akin to the following:

[F]or treatment to be effective, therapy needs to be conducted in a confidential environment where family members can work productively on personal material. In the capacity of treating clinician, I will do my best to keep case material confidential within the limits of the law. As the treating clinician, I will not offer opinions in court regarding custody or visitation of the children, for that is the realm of an expert witness, not a treating clinician (emphasis added).63

They also suggest that the clinician communicate the limits of their role to the parties’ counsel, and ask counsel to agree not to, “ask the treating clinician to testify or provide opinions in a Court of Law regarding the custody, visitation, or access to the child(ren).”64 The authors make explicit that a clinician should not engage in therapy and advise the Court with respect to the parties’ abilities.65 For these purposes, they advise that a court-appointed professional engage in a more restrictive intervention, which does not include therapy, and consists only of collecting data and making recommendations to the court.66

In 2005, Markan and Weinstock published another article that clarified the differences between evaluative methods of therapeutic intervention and intervention-based methods. It also recommended specific best practices to judges for use in making and implementing referrals for therapeutic intervention. Last, it identified methods of intervention and evaluation appropriate in situations of various risk and conflict, and provided language for court orders.67 This article was the basis for a Bench Book written for Maricopa County judges, which adopts most of the article’s language and provides several sample orders.68 Most therapeutic intervention orders follow this precise language, verbatim.69

60 Kenney and Vigil, supra note 21 at 629. The article provides a broad overview of the growing trend of divorce, the mechanics of child custody litigation, and propose a framework for therapeutic intervention services.60 They introduce and define many of the key pieces of therapeutic intervention that are explored more thoroughly in Part II.C, infra.
61 Id. at 655–57.
62 Id.
63 Id. at 655.
64 Id. at 655–56.
65 Id. at 657 (“The treating clinician, no matter what the dynamics of the case (child sexual abuse, domestic violence, child abduction), cannot serve in a treatment capacity and an expert capacity at the same time,” and should not “be in the position of fact finding, report writing, or providing testimony regarding custody, visitation, or access.”).
66 Id.
68 See, e.g., In re Bryan Glenn Caudron, Order Reappointing A TI, Superior Court of Arizona, Maricopa County, FC 2009-091249 (June 13, 2011), at 5–6.
Interestingly, although this article also acknowledges the problem of therapists crossing ethical boundaries by serving in mixed roles, the authors now stipulate that TIs are not bound by any obligation of confidentiality. However, it also recognizes that as the roles of TIs expand, it is “ethically incumbent” upon TIs to seek training and recommends mentored or supervised intervention.

3. Other Statutes Relevant to Therapeutic Intervention

When therapeutic intervention is assigned in a case involving domestic violence, other statutes and rules of law may become relevant to a judge’s decision. However, as is further explored in Part III.B, these statutes may be sparingly respected. Criminal statutes, domestic violence and custody statutes, and constitutional provisions may affect how a judge defines—or should define—the parameters of therapeutic intervention in a particular case.

If an offender has been found guilty of domestic violence, probation conditions may prohibit contact with victims. Additionally, Art. 2, § 2.1 of the Arizona Constitution provides a Victim’s Bill of Rights, which enumerates a number of constitutional protections for crime victims. Chapter 40 of Title 13 of the Arizona code, entitled “Crime Victims’ Rights,” also enumerates statutory protections for crime victims, which include a right to privacy, the right to be noticed about proceedings, and a right to be heard.

Of particular concern are statutes related to the effect of domestic violence upon a judge’s custody decision. These statutes, found in Ariz. Rev. Stat. §§ 25-403 and 25.403.03, compel the court to consider the safety and well-being of the child and of the victim to be of primary importance, and state that the court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court is prohibited from awarding joint custody if it makes a finding of significant domestic violence. If the court determines that a parent who is seeking custody has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of custody to the offending parent is contrary to the child’s best interests. To rebut this presumption, the court may consider whether the offending parent has completed a batterer’s prevention program, substance abuse counseling, or a parental education course, and whether the offender is on probation or parole, or is restrained by a protective order. If the court finds that an offending parent has met this burden, the court must still place conditions on parenting time that best protect the child and the other parent from further harm. When a judge assigns a TI, s/he should do so in a manner consistent with these statutes.

D. The Terms of Therapeutic Intervention

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70 Markan and Weinstock, supra note 1 at 467–68, 478.
71 Id. at 468.
72 See, e.g., Ariz. Rev. Stat. § 36-3710 (D)(2) (West, Westlaw through the First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).
74 Ariz. Rev. Stat. § 13-4401–4441 (West, Westlaw through First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).
75 Ariz. Rev. Stat. §§ 25-403.03 and 25-403 (West, Westlaw through First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).
76 Id. at § 25-403.03(A).
77 Id. at § 25-403.03(D).
78 Id. at § 25-403.03(E).
79 Id. at § 25-403.03(F).
1. **Duties and Roles of the TI and Parties**

Court orders should explicitly delineate the type of therapeutic intervention ordered, and the confines of the TI’s role. The contours of the role should differ depending on the type of evaluation or intervention ordered. However, as discussed in Part III.G, despite the critical importance of providing definitions of or restrictions on a clinician’s role, courts do not always do so. Orders for a therapeutic reunification clinician mandate that s/he:

1. provide rehabilitation of a relationship between identified family members;
2. identify, establish and communicate clear boundaries, behavioral expectations, and rules, in order to enhance safety and health in the family;
3. make referrals for therapy as appropriate for containment of psychological or behavioral issues regarding the parents or children as needed;
4. report child maltreatment pursuant to applicable child abuse reporting statutes;
5. facilitate the development of, or implement a court-ordered, child-focused, schedule for access;
6. facilitate conflict resolution;
7. provide education and support to obviate re-litigation;
8. assist family members in establishing:
   a. rules for healthy interaction with each other;
   b. rules for safe touch;
   c. rules for appropriate child discipline;
   d. rules for establishing appropriate behavioral limits;
   e. rules for family boundaries;
   f. rules for what is discussed in telephone contacts between parent and children;
   g. rules for behavior at exchanges; and
   h. rules regarding who is present at exchanges and access.

TIs can also request that the parties and/or children seek additional services, provided by third parties, such as psychological or physical exams, psychotherapy, co-parenting education, or alcohol and drug monitoring. In fact, no other clinicians, therapists, psychologists, or social workers, are permitted to work on the case during the TI’s tenure, unless s/he has permission from the TI or the court.83

Court orders also define the parties’ roles, which include keeping the TI informed of concerns, meeting the behavioral rules outlined in the court order and established by the TI, promoting a healthy relationship between their children and the other parent and within the family as a whole, and providing the TI with requested records, and keeping him/her updated on court proceedings. TIs can report non-compliance on the part of a party to the court, and recommend sanctions.85

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80 Markan and Weinstock, *supra* note 1 at 475.
81 *Id.* at 475–76.
83 *Id.* at 28.
84 Markan and Weinstock, *supra* note 1 at 479.
85 MARKAN AND WEINSTOCK, BENCH BOOK, *supra* note 82 at 28.
Lastly, and importantly, the TI has a significant duty to the court, and as such, a pivotal role in the outcome of a case. S/he “shall serve as an expert for the court in order to provide data and opinions relevant to the care of, custody of and access to the minor children.” Moreover, s/he has the “authority to make recommendations regarding implementation, clarification, amendment and enforcement of any temporary or permanent treatment or reunification orders of the court.”

2. Confidentiality and Access to Records

Currently, a TI owes no duty of confidentiality to the parties s/he services. The lack of confidentiality is the most critical way in which forensic work, such as therapeutic intervention, differs from traditional therapy. Many court orders utilize the exact language provided by Markan in her 2005 article. Additionally, court orders explicitly grant TIs access to all court records, children’s and parents’ therapy records, children’s school and medical records, records of psychological testing or evaluations performed on the children or parties, Child Protective Services records, and to the children’s teachers and child care providers. Typical court orders require each party to “execute any and all releases or consents necessary so as to authorize the TI’s access.” They further provide that when a party provides data to the TI, it is required to simultaneously send a copy of the same documentation to the opposing party and counsel, if any. In cases involving domestic violence, in which a victim’s address or other important information must be shielded from the offender, this feature of intervention is particularly dangerous. The more access an offender has to intimate details regarding the victim, the greater the opportunity to manipulate and control her/him.

3. Fees and Payment

The parties must pay for the TI’s services. In Maricopa County, fees range from $70 to $400 per hour. Courts use their own discretion to determine what percentage of the fee each party should pay. If a party fails to pay, the TI is permitted to ask the court to direct payment to avoid a stall in services. Where the court has the discretion to order a victim to pay for services that would not be necessary but for the offender’s violence, the court is able to re-

86 Id. at 26.
87 Id. at 28.
88 Markan and Weinstock, supra note 1 at 478.
89 Id.
90 Id. (“There is no confidentiality relating to the parties’ communications with/to the TI or concerning the TI’s activities, treatment referrals, data collection, or recommendations. This court order constitutes a complete waiver of doctor-patient privilege, as the TI is appointed as the court’s expert. Additional rules applicable to the TI may be ordered by the Court from time to time.”)
91 See, e.g., In re Bryan Glenn Caudron, Order Reappointing A TI, Superior Court of Arizona, Maricopa County, FC 2009-091249 (June 13, 2011), at 5–6.
92 Id. at 6.
93 Id.
94 Markan and Weinstock, supra note 1 at 478.
96 Markan and Weinstock, supra note 1 at 478.
97 Id.
victimize the victim. Currently, there are no institutional protections against this injustice within the therapeutic intervention framework.

4. **Quasi-Judicial Immunity and Avenues of Redress**

With respect to all actions undertaken pursuant to the Court’s appointment and orders, TIs are “cloaked with applicable judicial immunity” to the same extent as are all other quasi-judicial officers of the Court. In *Lavit v. Superior Court In and For County of Maricopa*, a98 the Arizona Court of Appeals affirmed that a court-appointed official, such as a psychologist or psychiatrist, who assists the court in making decisions, is entitled to *absolute* judicial immunity because exposure to liability could “deter [court-appointed officials] acceptance of court appointments or color their recommendations,” or make the official a “lightning rod for harassing litigation.”a100 Thus, should a TI fail, objectively or subjectively, to meet the expectations of a party or of the court, the TI cannot be found liable in court.

Not only does a party have no recourse in court for his/her concerns about a TI, should a party choose to complain to the TI’s mental health licensing board s/he must notify the court within three days. The court is permitted to hold the party, and his/her attorney, in contempt for failing to do so. Furthermore, a court is permitted to review the party’s complaint against the mental health professional, and, if the court, within its own judgment, finds that the party complained in an effort to hinder the legal process, it may impose sanctions against the complainant. While this rule may be beneficially intended to dissuade the abuser from interfering with the TI’s work and manipulating the victim through the court system, it also permits little recourse for an aggrieved parent in cases of unethical conduct by a TI. This is both unjust and potentially dangerous in cases where, for example, a TI refuses to respect an order of protection, and orders re-contact between a victim and abuser.

Judges’ orders instruct parties to address concerns about a TI to the judge, who can either dismiss the clinician and appoint another, or disregard the party’s objection. Furthermore, a party cannot make a complaint to a mental health professional’s licensing authority, professional association, or administrative body without the permission of the court. Additionally, Rule 71 of the Arizona Rules of Family Law Procedure provides that “upon request of any court appointed professional, the court may seal any file or portion thereof that the court finds to contain any defamatory information about the court appointed professional.” Last, a TI has the authority to recommend sanctions to the court for a party it determines to be non-compliant. TIs have extraordinarily broad protection from adverse actions taken against them, either deservedly or undeservedly.

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99 *Id.*
100 *Id.*
102 *Id.*
103 *Id.*
104 Telephone interview with Judge David Gass, Judge, Maricopa County Superior Court (Nov. 9, 2011).
105 *Id.*
106 Ariz. R. Fam. L. Proc. 71(B) (West, Westlaw through amendments received through 10/1/11).
107 See, e.g., *In re Bryan Glenn Caudron, Order Reappointing A TI, Superior Court of Arizona, Maricopa County, FC 2009-091249* (June 13, 2011), at 5.
5. **Reporting Duty**

TIs must deliver a written summary of the parties’ progress to the court and to the parties every ninety days.\(^{108}\) The report can be “received in evidence without the necessity of any foundation and without the objection to hearsay statements contained therein or any other objection.”\(^{109}\) If the TI believes that dissemination of the report to the parties could result in harm to a person involved in the case, he can address his concerns to the court, which can limit dissemination of the report.\(^{110}\) However, either party may call the TI as a witness.\(^{111}\) Sixty days prior to the end of the TI’s term, the TI must provide to the court and parties a summary of the services rendered, the parties’ compliance, recommendations made, and recommendations for any future involvement of the TI.\(^{112}\)

6. **Length of Service**

Typically, TIs are appointed for twelve months.\(^{113}\) They can be reappointed upon motion by the Court, a party, or the TI.\(^{114}\) Their terms may expire earlier for good cause, by stipulation of the parties, or resignation of the TI.\(^{115}\)

### III. The Problem With Therapeutic Intervention

Significant evidence demonstrates that therapeutic intervention is problematic for all types of divorcing families, but especially for those enduring domestic violence. In early 2011, the *SF Weekly* published an exposé on problems associated with court-appointed mental health professionals in cases involving allegations of family abuse.\(^{116}\) Among the cases it reported was that of Karen and Rex Anderson.\(^{117}\) When the Andersons divorced, Rex was given primary custody of their 15-year-old daughter and 8-year-old son because he made more money.\(^{118}\) After Karen alleged that Rex was sexually abusing their daughter, the court asked a psychologist to evaluate the case.\(^{119}\) After the psychologist called Karen paranoid and her concerns baseless, the judge again granted primary custody to Rex.\(^{120}\) Four years later, Rex pled no contest to twenty-five counts of child sexual abuse against his daughter, and is now serving a twenty-three year prison sentence.\(^{121}\)

Evidence of similar injustices is available in Maricopa County. In one case currently in the court system, a couple with three children had been married for over twelve years when they

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\(^{108}\) *Markan and Weinstock, Bench Book*, supra note 82 at 31.

\(^{109}\) *Id.*

\(^{110}\) *Id.*

\(^{111}\) *See, e.g., In re Bryan Glenn Caudron, Order Reappointing A TI, Superior Court of Arizona, Maricopa County, FC 2009-091249 (June 13, 2011), at 6. However, given that many abuse victims are without counsel, this protection may be of little or no help, especially if the abuser does have counsel.*

\(^{112}\) *Markan and Weinstock, Bench Book*, supra note 82 at 25.

\(^{113}\) *Id.*

\(^{114}\) *Id.*

\(^{115}\) *Id.*


\(^{117}\) *Id.*

\(^{118}\) *Id.*

\(^{119}\) *Id.*

\(^{120}\) *Id.*

\(^{121}\) *Id.*
separated. Father was continuously violent, and had been arrested and convicted twice for assaulting his wife. On the second occasion, he was charged with assault after strangling, slapping, punching, kicking, and hitting his wife; he received one year’s probation, and was ordered to complete a 26-week batterers’ intervention program. During the separation, Father stalked Mother, employed co-workers to sit outside of her house, and broke into her house. On one occasion, the middle child returned home from a visit with her father with a large bruise on her back, claiming that her father’s girlfriend, a convicted felon, hit her.

The judge ordered a TI to reunite the oldest child and her father, and required Mother and Father to pay 46% and 54% of the cost, respectively. The TI requested that Mother meet with Father so that he could apologize to her, and also requested that Mother permit Father to pick up the children from her house, despite the fact that she held an order of protection against him. Furthermore, the TI told the eldest daughter that if she had any complaints about her father, she was to address them to the TI, and withhold them from her mother.

The judge noted that Father pled guilty to domestic violence charges, and was convicted in two separate incidents, but refused to make a finding of significant domestic violence. He reasoned that he was impressed with the Father’s attendance at a batterers’ course, and wanted to impose a reunification strategy to strengthen the relationship between the child and parent. The judge further determined that being in Father’s custody was in the best interest of the children, reasoning that Father’s parents testified that their grandchildren are excited to see their father, and enjoy the same music, movies, and sports as Father.

Although one case is not a scientifically representative sample of all TI cases involving domestic violence in Maricopa County, it is indicative of the significant problems in this area. This section details the harms caused by therapeutic intervention. It focuses especially on the unique issues presented in cases involving domestic violence.

A. The Therapeutic Intervention Model is Based on a Questionable Philosophy that Minimizes the Seriousness of Domestic Violence and Blames Victims

Despite being written predominantly to address the issue of alienation and estrangement, the therapeutic intervention model does not address Parental Alienation Syndrome (“PAS”) in either an affirmative or critical manner. Given the close association of PAS with the issue of alienation, this is a concerning absence. Because of this, judges and TIs, who have the authority to impose their own beliefs upon parties, are left without guidance or expectations with regard to this dangerous theory. Experienced attorney and clinical professor Joan Meier states that it is especially important to provide theoretical and philosophical direction on alienation to court-appointed mental health professionals:

To a great extent, the influence of PAS thinking on custody courts has been driven by the neutral “allied” professionals who serve such courts, including custody evaluators, other forensic evaluators, and guardians ad litem (“GALs”). While some judges already may be predisposed to skepticism about abuse claims

122 Interview with Marilyn Dytyrt, Victim Services Specialist, Chandler Police Department, in Chandler, Ariz. (Nov. 4, 2011). The parties’ identifying information has been removed and court orders in the case are not cited to protect the victim’s and family’s anonymity.
123 Id.
124 Id.
125 See Kenney and Vigil, supra note 21; Markan and Weinstock, supra note 1; MARKAN AND WEINSTOCK, BENCH BOOK, supra note 82.
in custody litigation, “expert” opinions from neutral psychologists or GALs invoking purportedly scientific concepts can powerfully influence genuinely inquiring courts, even where such expert opinions actually lack genuine scientific basis.  

There is evidence to suggest that PAS is being invoked as a legitimate condition in Maricopa County by judges and TIs. At least one training document, written by TIs Julie Skakoon and Stuart Friedman, briefly mentions that the alienation problem addressed by therapeutic intervention “does not reference the controversial concept of Parental Alienation Syndrome.” However, one mother, who published an account of her own experience with Julie Skakoon, alleges that the TI’s report was based predominantly on Skakoon’s belief that the mother had perpetrated parental alienation, as defined by PAS. Moreover, as evidenced by the sample case at the beginning of this section, it seems that many judges prioritize co-parenting and the importance of “keeping the family together,” sometimes in a manner inconsistent with the safety of the children and victim of domestic violence.

B. Courts Are Ordering Therapeutic Intervention with Violent Offenders

ARIZ. REV. STAT. § 25-403 sets forth a presumption that awarding custody to a domestic violence offender would not be in the best interests of the children. No such presumption exists within ARIZ. REV. STAT. § 25-405(B), the statute that authorizes therapeutic intervention; thus, parents with a history of domestic violence are not statutorily presumed unfit or unready to become involved in therapeutic intervention. Furthermore, the statute does not prohibit family court judges from ordering therapeutic intervention when a victim has an order of protection against the offender. And while the therapeutic intervention framework, as devised by Markan, Weinstock, and Vigil, does not advocate therapeutic reunification or re-contact in cases involving unaddressed domestic violence, it is not clear that judges are abiding by this protocol. Indeed, judges are not statutorily prohibited from ordering therapeutic reunification or re-contact in cases involving a violent offender.

TIs have the authority to request the compliance of the child and of the aligned parent, who is also frequently a victim. If the party fails to comply, he/she faces the threat of court sanctions. The TI may conclude that compliance demands interaction between the offender and the victim, or that the victim bend to accommodate the offender’s requests. Not only does this compromise the safety of the child and adult victim, it lends the authority and legitimacy of the court to the offender’s unlawful and immoral behavior. Furthermore, social scientists have

126 Meier, supra note 12 at 240–41.
129 See supra Part II.C.1.
130 Id.
131 ARIZ. REV. STAT. § 25-405(B) (West, Westlaw through the First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).
132 See David Weinstock and Diana Vigil, Bench Book: Sample Court Orders to Appoint Mental Health Professionals 52, 60, 67, 71, 74 available at http://fcande.com/presentations/ (to access, scroll down to “October 2008” and click on “Download Sample Court Orders”) (last accessed November 18, 2011).
133 See Part III, supra.
observed that some types of domestic violence perpetrators are more likely to be deficient if not abusive as parents, are poor role models for their children, are likely to undermine the victim’s parenting role, and are more likely to use the family court system as a new forum in which to continue controlling and harassing their former partner.134 Thus, when the court orders a professional to facilitate a relationship between a child and an abusive parent, it is exposing children to the increased risks of contact with an abusive parent. The framework for therapeutic intervention, and especially for reunification and re-contact, fails to acknowledge the proven hazards involved in such relationships, and provides no guidance to TIs and judges for navigating these troubled waters.

C. Courts Are Prematurely Ordering Therapeutic Reunification

Markan, Weinstock, and Vigil’s system of therapeutic intervention acknowledges that some methods of intervention are better suited for families in certain circumstances.135 Indeed, as displayed in Figure 1, supra, there are three levels of therapeutic intervention which correspond to the severity of risk in a certain case. The special dynamics presented in a case involving domestic violence are never specifically or substantially addressed in Markan’s, Weinstock’s, and Vigil’s articles. However, the authors do recommend that therapeutic recontact and reunification not be ordered in cases involving family violence until a judge has made findings that the offender does not pose a significant risk to the children, and until the offender has successfully completed a treatment program.136 Further, when allegations of abuse and violence are made, the authors recommend that these high risk cases be initiated with a comprehensive evaluation to determine the accuracy of the allegations and the appropriate course of treatment.137

It does not appear that this protocol is being followed in Maricopa County Superior Courts. Evidence suggests that judges are taking on the evaluative role themselves, instead of appointing professionals to collect data and engage in scientifically-sound forensic examinations of children and parents.138 Thus, courts are reaching binding conclusions about the level of danger present in a specific circumstance through their own unscientific and perhaps biased methods, and without engaging in critical fact-finding. For example, in the case described in Part III.A above, the judge discredited the mother’s allegations of ongoing domestic violence, reasoning that her story was corroborated only by the victim’s mother, who the judge found untrustworthy.139 In the judge’s eyes, the fact that the father pled guilty to and was convicted of two incidents of domestic violence lent no credibility to the mother. In this case, the judge ordered therapeutic reunification with the eldest daughter, through which the mother was asked to meet with the father, and to allow him to pick up the children at her address, which was made confidential by an order of protection. Though it seems that this is precisely the type of case in which it would be appropriate to order a comprehensive evaluation to determine whether the offender was ready to renew a relationship with his child, the judge did not do so. By failing to order a preliminary evaluation to determine the father’s dangerousness or the suitability of therapeutic reunification, the judge risked the safety of both the children and the victim.

135 See Figure 1, supra; Markan and Weinstock, supra note 1 at 468–73.
136 Id. at 471–73.
137 Id. at 468–71.
138 See Part III, supra.
139 See supra notes 121–123.
D. Judges Do Not Provide Sufficiently Detailed and Defined Orders

Markan, Weinstock, and Vigil recommend that a court’s order specifically define and confine a TI’s role.140 Other experts agree: “The contact between a rejected parent and child must be court ordered, with very clear parameters specifying how, when, and where visits occur. Ambiguous orders with insufficient detail provide fertile ground for conflict and acting out, thereby undermining and sabotaging well-intentioned interventions.”141 However, the court orders currently in use for therapeutic reunification, re-contact, and the numerous methods of evaluation differ in very few respects from each other, and often do not clearly explain the basis of the TI’s authority, the context in which she has been appointed, or the goals for the intervention or evaluation.142 Thus, in addition to having absolute judicial immunity, being heavily protected from professional censure, and having the authority to set their own pay rates and determine the length of their own treatment, TIs have significant freedom in determining how to treat a family.

Indeed, in a presentation made by TIs, the facilitators refer to the judge’s orders as “blanket court order[s],” and state “The court orders for a therapeutic intervention in Maricopa County are typically a blanket order that allows the TI to fill multiple roles. Sometimes the court adds some specificity to what is to be done; sometimes it is left to the TI to figure it out” (emphasis added).143 In circumstances involving domestic violence, where courts put the physical, emotional, and financial welfare of a family into the hands of mental health professionals who have a great deal of immunity and control, this is problematic. It is ethically and professionally incumbent upon the courts to ensure that the professional exercises his authority in pursuit of common, healthy, and productive goals, and does not have unchecked reign. After all, if the court is unable to define exactly what the TI is to accomplish, reasonable parties may rightfully question whether the TI should be involved at all.

E. TIs Have Insufficient Training in Domestic Violence

Maricopa County Superior Courts maintain a roster of mental health professionals available for assignment to a case.144 The roster lists the education level attained by the professional, the type of license held, the hourly rate, and the types of services provided.145 At the top of the roster is the statement: “The following information was provided by the service provider. The Court has not completed an independent investigation as to the truth or accuracy of the information or as to the competency of the provider to provide professional services.” (emphasis added).146 This policy is dangerous and shortsighted. Courts see fit to entrust children’s safety and wellbeing in the hands of TIs, and to endow them with significant authority

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140 See Part II.D.1.
142 Numerous orders for therapeutic intervention are available simply by googling “therapeutic intervention + Maricopa County Superior Court.” All orders reviewed by the author employ language—verbatim—from Markan and Weinstock’s bench book.
144 See supra note 95.
145 Id.
146 Id.
and immunity, but do not train TIs to ensure their efficacy, or even check to ensure that TIs are actually licensed professionals. Indeed, the courts blindly trust individuals to truthfully provide their own professional credentials, knowing that once appointed, the therapist will have a steady cash flow and near-complete immunity from complaint. Courts do not even inquire as to the competency or licensure of the individual to do the job for which s/he is being paid handsomely, let alone require that TI have any background or training in the highly complex dynamics of domestic violence.

F. TIs Have Nearly Unchecked Authority

Courts neither require TIs to have training, let alone domestic violence training, nor investigate the legitimacy of a TI’s professed qualifications. Nevertheless, they see fit to grant them absolute immunity. They also shield them from the professional consequences of a parties’ complaint to a mental health board, as discussed in Part II.D.4. Thus, victims who are negligently or maliciously treated have no recourse.

This problem was highlighted by Peter Jamison in March 2011 in an article concerning the often dire consequences of court-appointed mental health evaluators whose bias or lack of training leads them to reject a victim’s concern about domestic violence and child abuse.147 Jamison highlights the case of Katie Tagle, who complained to her judge about her ex-boyfriend, who shared custody of their infant son, and who threatened several times in emails to kill himself and their child if she did not come back to him.148 The judge called her a liar and did nothing.149 Tagle’s boyfriend murdered their child and committed suicide ten days later.150 Tagle reported to Jamison that she would like to see “a stripping of the legal immunity enjoyed by judges, evaluators, and all the other personnel who make up the complex apparatus of the state’s troubled family courts,” because “when decisions about child welfare turn out to be disastrous, parents like [herself] have no recourse.”

Families in Arizona who have been harmed by the decisions of TIs, and who have no other outlet, have turned to the internet to express their concerns and to warn others. Internet review websites contain personal accounts of parties’ experiences with many of the therapists on the court’s roster list, and many receive only very poor reviews.152 One party created a blog dedicated solely to warn others about her poor experience with Julie Skakoon, the TI assigned to her case.153 In the blog, the author provides documentation from the therapist’s notes and report indicating her bias, such as a diagnosis of Parental Alienation Syndrome.154 Unfortunately, because these reviews are on the internet, they are not accessible to all individuals, and even if they were, a party has little control over which TI is appointed to his or her case. Moreover, they are not representative of all parties’ experiences. Nevertheless, these impassioned reviews are an

148 Id.
149 Id.
150 Id.
151 Id.
154 Id.
indicator of the powerlessness many parties feel when a TI, with unchecked authority, undefined power, potentially inaccurate or biased understandings of domestic violence dynamics, and the ability to indiscriminately drain a party’s funds, is appointed to make profound decisions about their children and their lives.

G. TIs Cross Ethical Boundaries by Acting in Both Therapeutic and Evaluative Roles

Therapeutic reunification and re-contact clinicians are charged with fostering an improved relationship between a parent and child, giving education and support, and teaching conflict management skills. 155 This is a therapeutic endeavor. However, these professionals are also charged with providing the court with a report detailing the parties’ progress, which can be used in evidence; and the TIs themselves can be called as a witness for and by either party. 156 More importantly, the TI has the authority to make recommendations to the court regarding treatment and future court orders. Thus, in addition to serving as therapists, the TIs also serve as evaluators for the court, using data derived from their therapeutic endeavors to aid the court in reaching legally-significant conclusions. 157

This is problematic because mental health professional organizations and social science scholars explicitly state that occupying such dual roles is professionally unethical. Two experts argue for strict separation between therapeutic roles and those which may influence the outcome of a case: “Any therapist working with the child or family . . . should not be expected or empowered to make recommendations or binding decision for the family.” 158 Furthermore, the American Psychological Association’s Guidelines for Psychological Evaluations in Child Protection Matters stipulate that, “Psychologists generally do not conduct psychological evaluations in child protection matters in which they serve in a therapeutic role for the child or the immediate family or have had other involvements that may compromise their objectivity.” 159 Such dual roles are inappropriate, experts reason, because therapists and evaluators ultimately serve different objectives. 160 They must engage in a “mutually exclusive level of involvement in

155 See Part II.D.1.
156 Id.
157 See, e.g., In re Bryan Glenn Caudron, Order Reappointing A TI, Superior Court of Arizona, Maricopa County, FC 2009-091249 (June 13, 2011), at 5 (“The TI has the authority to make recommendations regarding implementation, clarification, amendment and enforcement of any temporary or permanent treatment or reunification orders of the court. Such recommendations are made in writing and copied to counsel or the parties.”)
158 Sullivan and Kelly, supra note 141 at 309.
159 American Psychological Association, Guidelines for Psychological Evaluations in Child Protection Matters 19–20 (1999) available at http://www.apa.org/practice/guidelines/child-protection.pdf (last accessed November 19, 2011). The APA’s guideline on the subject reads: “Psychologists providing child protection evaluations strive to avoid role conflicts and multiple relationships that may compromise their objectivity, competence, or effectiveness, or that may otherwise risk harm or exploitation to the person or identified client (e.g., court, state child protection agency) with whom the professional relationship exists.” The guidelines further provide: Inappropriate role conflicts and multiple relationships impair psychologists’ abilities to conduct impartial and competent evaluations. As a result, opinions and recommendations from such evaluations will be unable to provide useful information or guidance to entities intervening in the family on the child’s behalf and may not provide the basis for reliable testimony that will assist the court to make decisions that address the child’s best interests.
160 Greenberg and Shuman, When Worlds Collide, supra note 26 at 129. See also and Shuman, Irreconcilable Conflict, supra note 26 at 52 (articulating ten differences between therapeutic and forensic relationships, including, (1) the identity of the client, (2) the relational privilege that governs disclosure in each relationship, (3) the cognitive set and evaluative attitude of each expert, (4) the differing areas of competency of each expert, (5) the
the fabric of the patient-litigant’s mental health, *either trying to better it or dispassionately evaluating it for the court*.161

It is entirely unclear that any meaningful distinction is drawn between the therapeutic and evaluative roles of TIs in Maricopa County. In their initial article, and as elaborated upon in Part II.C.2, Markan and Vigil argued that a court should not engage a professional to serve in both a therapeutic and evaluative role, and that TIs should take it upon themselves to ensure that the court, parties, and attorneys understand and respect the distinction in roles.162 Alarming, these same precautions disappeared in Markan and Weinstock’s 2005 article.163 Moreover, protections against such dual roles are not clearly defined or meaningfully recommended against in sample orders, or in actual orders. For example, orders for a therapeutic reunificationist stipulate that the professional will serve both in a therapeutic capacity, and will make recommendations to the court regarding the parties.164

IV. RECOMMENDATIONS

The practice of therapeutic intervention has now existed in Maricopa County for fifteen years. The time is ripe to closely examine the practice, to take account of changing family dynamics, and to ensure that Maricopa Courts are helping—and not harming—families who are already in chaotic, vulnerable positions. This section includes recommendations that the Maricopa County Superior Court consider (1) undertaking a critical study of the practice of therapeutic intervention in family court, and (2) entirely replacing therapeutic intervention with a more scientifically-sound framework, or considerably amending it to address its substantial flaws. Last, the statute authorizing therapeutic intervention should be amended to more narrowly confine the practice of therapeutic intervention.

A. The Court Should Study and Evaluate the Practice of Therapeutic Intervention

In its fifteen years of existence, the practice of therapeutic intervention has never been studied or evaluated by the court, the county, or the state. No data exists concerning whether therapeutic interventions have successfully reunited families, whether their relationships improved and remained solid, whether the parents who were reunited with children ultimately proved fit for reunification, or on whether victims of domestic violence were justly served throughout the process. Similarly, no data exists to suggest that alienation and estrangement are indeed problems severe or widespread enough to require a multidimensional mental health apparatus within the family court. The family court system should conduct a study in which cases are revisited and examined to determine the efficacy of therapeutic intervention, particularly in cases involving domestic violence. For instance, it might question whether therapeutic reunification or re-contact was even indicated, given the presence of a violent offender, whether an evaluation was ordered to initially assess the risk of the abuser, and whether TIs ordered victims to compromise their safety, parental authority, or dignity throughout the intervention. Lastly, the study should examine the biases of family court judges with respect to the nature of the hypotheses tested by each expert, (6) the scrutiny applied to the information utilized in the process and the role of historical truth, (7) the amount and control of structure in each relationship, (8) the nature and degree of “adversarialness” in each relationship, (9) the goal of the professional in each relationship, and (10) the impact on each relationship of critical judgment by the expert.

163 See Markan and Weinstock, *supra* note 1.
Parental Alienation Syndrome in an effort to assess exactly what type of training and education is required to ensure that judges fairly adjudicate cases, and are not influenced by unproven and dangerous theories. With these results in hand, the court will be better able to make wise decisions on how best to improve its services.

B. The Court Should Consider Replacing Therapeutic Intervention With Another Model

Significant research has been done on methods of fostering an improved relationship between estranged parents and children. Unlike the Maricopa County system of therapeutic intervention, much of this research takes into account the problems of abuse and realistic estrangement and explicitly prescribes differentiated treatment based on the origin and nature of the problem. Steven Friedlander and Marjorie Gans Walters have built upon the work of several social science experts to recommend a new paradigm for treating families embroiled in conflict within the family court systems. Friedlander’s and Walter’s work advocates the “Multi-Modal Family Intervention,” (“MMFI”) which is both based upon sound principles and has been tested and studied in real families. The Maricopa County courts should consider adopting this system because of its proven efficacy.

Friedlander and Walters describe the MMFI as a “comprehensive, multi-faceted, flexible intervention that has broad goals, stresses the need for inclusion of all family members, customizes the components of the intervention and matches them to the nature of the problem.” It differs from therapeutic intervention in a variety of ways. Friedlander and Walters explicitly state that the goals of the MMFI program are broader than the goals of Markan and Weinstock’s program, in that their model is child-focused and seeks to understand the child’s perception of his/her parents’ problems and to restore “appropriate co-parental and parent-child roles in the family.”

MMFI recognizes multiple types of strained relationships, and features interventions customized to meet the needs of the children and parent. This is especially important to ensure that victims of domestic violence are not unjustly blamed for their children’s justifiably negative feelings about the abusive parent. Indeed, in a case where a child is realistically estranged by a parent due to domestic violence or child abuse, the MMFI model calls for an initial, in-depth evaluation of the relationship to discover the real cause of the relationship, and then focuses on changing the behavior of the abusive parent. The TI’s actions center on helping the estranged parent to “embrace full responsibility for any actions that have contributed to the problem and demonstrate an active and sincere willingness to change,” and then rebuilding the relationship in a context that refutes the parent’s poor behavior and building a new, positive foundation for the parent-child relationship.

Second, MMFI is built upon work that does not credit PAS. Importantly, it rejects the theory and acknowledges that the issue of alienation is far more complex and nuanced than the politicized theory of PAS. Thus, it leaves no room for judges or clinicians to insert their own

165 Steven Friedlander and Marjorie Gans Walters, When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem, 48 Fam. Ct. Rev. 98 (2010).
166 Id. at 98.
167 Id.
168 Id. at 99.
169 Id. at 98.
170 Id. at 107.
171 Johnston, Walters, and Friedlander, supra note 7.
philosophies into treatment. Third, MMFI involves and focuses on aiding the “preferred” parent and ensuring that he/she has active involvement in the treatment. Friedlander and Walters argue that this is critical to the success of the intervention, because the preferred parent must be prepared for the child’s improved relationship with the rejected parent, and is supported in the difficult work of ensuring a healthy relationship between the child and rejected parent. This is, understandably, especially difficult for victims of domestic violence. Last, unlike therapeutic intervention, MMFI has been the subject of controlled empirical studies that have shown its success, both in the short-term and long-term.

Whereas therapeutic intervention is not specifically tailored to address issues of domestic violence, the MMFI model includes interventions tailored to this population, including an acknowledgment that in some cases, not even MMFI will be appropriate for especially severe or pathological abusers. And, whereas therapeutic intervention has been especially troublesome, this model has proven successful. Thus, Maricopa County should seriously consider replacing therapeutic intervention with the MMFI model.

C. Alternatively, the Court Should Amend the Practice of Therapeutic Intervention

If the court system prefers not to overhaul its current program, it must, at the very least, take steps to address some of its most egregious features. Any improvement plan must mandate family violence training for both judges and mental-health professionals. The plan should also provide a protective mechanism for parents to ensure that their concerns receive due consideration. Lastly, authorities should consider amending Ariz. Rev. Stat. § 25-405 to more clearly define the parameters of therapeutic intervention.

1. Mandate Training for Judges

Because judges have the ultimate authority over a case’s outcome, they must be educated about the potential dangers of assigning therapeutic intervention in a family suffering from domestic violence. Training must include education on the deficits of the PAS theory and on the importance of ensuring that beliefs based upon this theory do not muddle a judge’s perception of a case. Training might also be based on, or at least include, feedback from survivors on what types of interventions were helpful and which were harmful. Judges must also be clearly instructed on ensuring that the type of intervention assigned matches the level of risk presented. For example, therapeutic reunification should never be ordered if, as was the case in the case described at the beginning of Part III, evidence suggests that violence is ongoing, or that a parent is unfit or unready to resume a relationship with his/her child. In such a case, a judge must engage in a significant level of fact-finding to determine the true readiness of an abuser to engage in lawful, moral behavior with his children and former partner. If, after such intensive fact-finding, the judge finds that the parent is ready to begin a relationship, s/he should begin by ordering therapeutic supervised visitation, and then progress towards re-contact, and then, reunification. If the parent appears unready, the judge should not order any level of therapeutic intervention, and should instead inform the abuser that s/he can readdress this issue after he has demonstrated appropriate progress.

172 Friedlander and Walters, supra note 165 at 99.
173 Id. at 109.
174 Id. at 106.
175 Id. at 109.
Next, training for judges must include clear instruction on the importance of ensuring that TIs never serve in both evaluative and therapeutic roles. The court should retain the services of social science experts to rewrite the sample orders to ensure that the roles and obligations of a therapist are clearly explicated and limited to either a therapeutic or evaluative role. In the common case in which a family needs the services of both a therapist and an evaluator, the judge must appoint two distinct individuals. The therapist should be ensured a confidential relationship, and the evaluator must be required to respect that confidential relationship to the greatest degree practical. Last, judges should be trained to write and enforce detailed orders that set out clear objectives, and stipulate the means by which a TI is permitted to accomplish these objectives. If a case involves domestic violence, the order should reflect special considerations for protecting the victim’s safety, integrity, and authority over her children.

2. Mandate Training for TIs

Currently, the Maricopa County court system holds mental-health professionals to an egregiously low standard of care, as explained in Part III.E. Given that these professionals have the power to set their own pay, decide when their services are no longer needed, access parties’ private records, and most importantly, make recommendations about critical issues of child custody, all with the immunity of a judicial officer, it is critical that these individuals be held to a higher standard of professionalism. They must receive training on the dynamics of alienation, estrangement, and domestic violence. TIs must also learn about how allegations or existence of abuse complicate the treatment and evaluation of a family with strained relationships. Furthermore, they must be cautioned against accepting a position which requires them to serve in both a therapeutic and evaluative capacity, and face consequences for engaging in dual roles.

As with judges, TIs must be educated on PAS and the true reasons for alienation and estrangement, such as domestic and child abuse. They should be trained in the specialized techniques used to meet the needs of such families, which must include supporting the child and victim, crediting their stories, and basing their treatment not upon the needs of the offending parent, but on the needs of the child. They should be especially cautioned against engaging in tactics that undermine the safety, credibility, and parental authority of the victim, such as requiring the victim to meet with the offender to hear his apology, or requesting that the victim allow the offender to pick up the children at her home while she and her address are protected by an order of protection.

While designing and implementing training for TIs may be a somewhat demanding project, there is one immediate and simple step the court should take to improve therapeutic intervention. The roster of TIs should be audited immediately to ensure that the listed professionals possess the credentials and licenses they claim. TIs found to have misrepresented themselves should be appropriately disciplined and removed from the roster, and the court should contact and apologize to families with whom they worked.

D. The Court or Legislature Should Create a Mechanism for Parties to Address Concerns

Currently, a parent is effectively barred from voicing concerns about a TI, as fully explained in Parts I.D.4 and III.F. While it is understood that family law cases are rife with conflict, impassioned emotions, and high stakes, parents cannot be denied such basic elements of due process when they stand to lose so much. Judges’ sample orders should be revised to

176 Certainly, the offending parents’ needs are to be considered, but they should not control the process, and should be secondary to the children’s and victim’s needs.
include clear instructions for a party wanting to bring concerns to the attention of the court, including objective guidance as to the burden of proof a party must bear to convince the court to take remedial measures.

E. **Revise Ariz. Rev. Stat. § 25-405 to Properly Define the Contours of Therapeutic Intervention**

   As explained in Part I.C.1, the statute authorizing therapeutic intervention was *not* originally written to authorize Markan, Weinstock, and Vigil’s method of therapeutic intervention. Instead, it was written nearly twenty-five years *before* they proposed therapeutic intervention. Thus, the authors seem to have used the statute as a catch-all provision to provide a basis in law for their method. As a result, the statutory foundation upon which therapeutic intervention rests is shaky at best. Instead of representing the will of the legislature, and thus, of the electorate, therapeutic intervention, in its current state, is simply the product of three individuals, and is unilaterally imposed upon citizens embroiled in family court matters.

   As it currently exists, the statute only authorizes the court to engage a professional to provide *advice* to the court; it does not authorize therapeutic treatment. After a study is done to investigate whether there truly *is* a need for therapeutic intervention, the statute should be revised to concisely delineate the purpose of mental health intervention, to ground its use in legitimate science, to specifically authorize the type of intervention found to be most helpful to families (i.e. either MMFI or an improved method of therapeutic intervention), to mandate that two distinct individuals serve the therapeutic and evaluative functions of intervention, to ensure that intervention is not based on the refuted and dangerous philosophies of PAS, to provide methods of recourse to families, and to mandate training for judges and TIs.

   A workable model for replication exists in **Ariz. Rev. Stat. § 25-406**, which governs evaluations made specifically to determine child custody arrangements. It requires that any individual who conducts an investigation or writes a report pursuant to § 25-406 receive six initial hours of domestic violence training, six initial hours of child abuse training, and four subsequent hours of training every two years on domestic violence and child abuse. While this language does not meet all of the objectives an improved statute needs, it provides a starting point for training requirements. After all, if the state sees fit to mandate training for *one* type of court-appointed mental health professional, it should make these requirements uniform for *all* court-appointed mental health professionals. Not doing so is anomalous and short-sighted.

V. **CONCLUSION**

   Maricopa County, its courts, and indeed, the state owe a duty to ensure that families, especially those who are already suffering from domestic violence, are helped and not harmed in their dealings with the courts. Currently, the courts and the state have breached this duty to their citizens by permitting judges to order, and TIs to execute, a method of treatment that is based, at least in part, on a dangerous philosophy and is being used in an unchecked and ill-advised fashion. The millions of families who rely on the family court system deserve more.

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177 Ariz. Rev. Stat. § 25-406 (West, Westlaw through the First Regular Session and Third Special Session of the Fiftieth Legislature (2011)).