



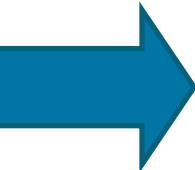
Resist/Refuse in Family Law Cases

A Guide for Oregon Judges

INTRODUCTION

The family system approach to addressing resist/refuse dynamics has been gaining in popularity to replace more fault-based analysis that have been ineffective in restoring parent/child relationships. Underlying this approach is the assumption that family reunification is the near-term goal, and that the genesis of the resist/refuse dynamic is bilateral parental behavior. This analytical approach may be inadequate in those cases in which there is an established history of issues implicating child and parent safety that underlie resist/refuse dynamics, such as mental health issues, substance abuse, child abuse and neglect and domestic violence. In those situations, great care must be taken and expert input on safety should be considered.

This handout includes a glossary of common terms used in cases involving the resist/refuse dynamic as well as information about common dynamics, interventions and treatments, and suggestions for judicial case management in such cases.



CAUTION: In families impacted by a history of child abuse or domestic violence, a primary consideration must be child and parent safety. In these cases, great care must be taken when considering reunification or family therapy. Well-informed, expert input is often needed.

- **GLOSSARY OF TERMS**
- **COMMON FAMILY DYNAMICS**
- **INTERVENTION AND TREATMENT**
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GLOSSARY OF TERMS

Resist/Refuse: The umbrella term used when a child resists or refuses contact with one of their parents.

- **Mild R/R:** The child expresses discomfort with or resistance to going with one parent, but they still go, and settle in after a short while and enjoy their time. This level of R/R responds well to individual child therapy and/or family therapy.
- **Moderate R/R:** The child occasionally refuses and is shut down or oppositional to one parent during most of their parenting time.
- **Severe R/R:** The child refuses to go to most or all parenting time.

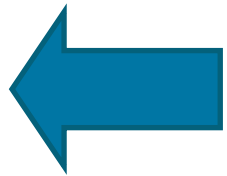
Affinity: The child develops a preference for one parent based on developmental factors, gender, interest areas, or style. This is a normal dynamic in most families.

Alignment: The child develops a strong and unwavering wish to spend more time with one parent. The child shares the thoughts and feelings of the accepted parent about the rejected parent.

Loyalty conflict: A child is aware of parental conflict and feels torn between parents. Choosing a side alleviates this stress. A parent may make unspoken or spoken demands for allegiance from the child. A child may feel this loyalty conflict even without demands from either parent.

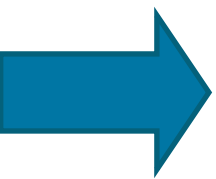
Justified Rejection: A child's rejection of a parent due to domestic violence, physical, sexual, emotional or other abuse, unskilled, neglectful or harsh parenting or discipline, poorly managed substance use or mental health disorders, etc.

CAUTION: Justified Rejection is a term used in the professional literature and is included here as such. Caution should be exercised in the use of this term in the court setting, as it can be easily misunderstood or misapplied. While it is used in the literature to describe the child's experience, it should not be interpreted to suggest that reunification cannot or never should occur, or that the R/R dynamic is exclusively the "fault" of one parent.



Alienation: Unjustified actions by a parent causing rejection by a child of the other parent when the child has previously had a reasonably good relationship with the rejected parent.

CAUTION: "Parental Alienation" is a highly controversial term about which social scientists and practitioners strongly disagree. Use of the term can be polarizing and can be "weaponized" in custody and parenting time disputes. An alternative term for this behavior is "gatekeeping."



Hybrid: A combination of more than one of the above factors exists in the family. **MOST** resist/refuse cases are hybrid cases. The behavior of the resisted parent has caused problems in their relationship with the child, AND the favored parent has engaged in appropriate or inappropriate gatekeeping behaviors. Often, neither parent can acknowledge their role in the family dynamics.

Family Systems Approach: The view that a family, even a separated family, is an emotional unit and that it is beneficial to address the structure and behavior of the broader relationship system rather than focusing on the behavior or fault of an individual family member. Note that even with a family systems approach, some behaviors must be owned and acknowledged and, in some situations, treated in order for the family unit to safely and successfully move forward.

COMMON FAMILY DYNAMICS

The early hallmarks of a family system where resistance might occur:

- The parties have a hostile and adversarial relationship. Caution should be used in situations involving domestic violence, child abuse, untreated mental health or substance abuse, etc., to determine whether the gatekeeping behavior is a protective behavior rather than a hostile or adversarial behavior.
- Both parties are actively looking for problems with the other party's parenting.
- Both parties are willing to believe negative allegations about the other parent regardless of the evidence.
- Neither party is entirely truthful or credible.
- Both parties have lingering unresolved anger about their historical relationship and/or separation.
- Both parties have allowed their hostility towards the other party to cloud their judgment.
- The parties are unable to see their own role in the conflict, the problems it creates in their parenting, and the effect that it has had and is likely to have on the children in the future.
- Both parties will likely disagree with the Court's assessment of the family dynamics and are unlikely to respect the Court's rulings. Both are likely to continue to assign sole responsibility for the problems in the family to the other parent.
- Each parent views the other as out of touch with reality, and each insists on their version of "the truth."
- An aligned parent may seem to act appropriately with the child, while simultaneously creating and maintaining an inappropriate negative or fear-based narrative about the rejected parent.
- Conflict escalation is a fundamental feature of these families and becomes the defining characteristic of the family relationship dynamic. The conflict takes on a life of its own that harms the child. "The conflict is the perpetrator" and can cause both stress and trauma responses in the child.
- Parent-child contact problems become intractable, persist, and worsen despite multiple attempts to resolve them.
- Usually the resisted parent is in a hurry to restore the parent-child relationship while the favored parent doubts that reunification will be possible anytime soon, if at all.

INTERVENTION AND TREATMENT

Appropriate treatment depends on whether the case is one of mild, moderate or severe resist/refuse, and whether the source of conflict involve threats to the child or parent safety.

- In general, we know more about how to assess R/R dynamics than we do about intervention and treatment.
- A "family systems" approach to case analysis, intervention and treatment is almost always warranted.
- Without prompt and correct intervention, time will usually make the problem worse.
- Professionals (therapists, attorneys, etc.) who hear only one side of the family story may become polarized and cause more harm than good.
- Both parents will likely need education, and both must actively help to solve the family system R/R problem when that can be done safely.
- An understanding of, and compassion for, the child's point of view is important when analyzing resist/refuse cases. Consider when it might be appropriate to appoint an attorney for the child.
- In order for the kind of family work that may be necessary for reunification to be successful, power and control dynamics, including domestic violence, child abuse, and harsh parenting practices, must first be recognized, acknowledged, and treated.
- Co-occurring complicating factors, such as poorly managed substance use or mental health disorders, must also be identified and addressed before engaging in the kind of family work that is indicated in a family systems approach.
- When parents are unable to negotiate an agreement about how to resolve the child's resistance, they need a detailed court-ordered parenting plan to guide the family and reduce conflict.

JUDICIAL CASE MANAGEMENT

For some moderate and most severe cases an active and available intervenor/decision maker is needed. This usually needs to be the Judge, although it can be a parenting coordinator (preferably an attorney PC). Giving a therapist this duty places them in a dual role that undermines therapeutic effectiveness and leaves them vulnerable to ethics challenges. Judges can engage in case management if there is a matter pending before the court, or with the agreement of the parties.

Important steps for judicial case management in R/R cases include:

- Early identification of high-conflict cases, and of the nature of the conflict to determine whether the use of judicial case management is more appropriate than some other intervention or if it can be used in combination with other tools;
- Careful analysis of the nature of the resist/refuse dynamic applying a family systems approach, and with an understanding of the child's point of view;
- Early identification of the issues needing resolution;
- Setting, right at the start, firm rules about the expected conduct of the parents towards the litigation, the children and each other, both in and out of the courtroom, advising them that there will be consequences if they do not comply, and spelling out what the consequences will be; then, if necessary, following through with appropriate sanctions or other interventions;
- Setting a time frame within which the case must be concluded that ensures the case will be resolved in a timely manner, either through judicial decision making or through an alternative dispute resolution process;
- Setting a schedule for the accomplishment of the steps needed to move the case forward towards a solution, including any necessary psychological or other assessments, or, where appropriate, therapeutic intervention;
- Sticking to the time limits and schedule established by the Court, not permitting changes without a compelling reason;
- Putting temporary (interim) court orders in place relating to the care and financial security of the children, and in doing so, limiting the number of interim applications the parties may file to the ones that are required to move the case to resolution and enhance child or parent safety;
- Controlling the presentation of evidence to ensure it is relevant, is focused on the issues, and is not inappropriately inflammatory.

ACTIVE JUDICIAL MANAGEMENT IS NEEDED

"... to limit the possibility of manipulating the court process by the parents, and to ensure a firm and quick response to violations of court orders. These are cases for which judicial case management is especially appropriate."

- Bala, Fidler, Goldberg, and Houston (2007)

RESOURCES

Overcoming the Alienation Crisis: 33 Coparenting Solutions (2020) John A Moran, PhD, Shawn McCall, PsyD, Esq., and Matthew Sullivan, PhD.

NCJFCJ Bench Tool: A Judicial Guide to Child Safety in Custody Cases

<https://www.ncjfcj.org/bench-cards/a-judicial-guide-to-child-safety-in-custody-cases/>

Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters:

<https://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>