

# Family Evaluation in Custody Litigation

Promoting Optimal Outcomes  
and Reducing Ethical Risks  
*Second Edition*

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may include IPV and, in particular, child neglect, abuse, and abandonment. Kalter and colleagues (1989) demonstrated that the length of time expected for significant recovery of members from highly litigious families is longer, and postdivorce adjustment is considered to be more stressful than had been predicted by earlier research.

As we have seen, continuing contact between children and parents in supportive families who are able to work through their disagreements is related to positive child well-being as both parents contribute resources to their children, and these have an additive effect (Sandler, Wheeler, & Braver, 2013; Sobolewski & Amato, 2007). This is true particularly for boys in mother-headed households (Hetherington, 1999b). It appears that the legal, financial, and emotional impact of highly litigious separation increases the risk of trauma to the children, who are frequently drawn into the middle of disputes even when parents have the best intentions of protecting them.

### The Controversy of Parental Alienation Syndrome/Disorder

The term *parental alienation syndrome* (PAS) was first coined by Richard Gardner in the 1980s. PAS assumes that children who show a dislike for one parent or demonstrate an unwillingness to live with him or her are frequently the victims of "programming" (i.e., alienation) by the other parent (Gardner, 1998; see the review by Pepiton, Zelgowski, Geffner, & Pegolo de Albuquerque, 2014). It further assumes that a child's strong alignment with one parent while rejecting a relationship with the other parent is without legitimate justification, including situations in which there is child abuse (Bernet, von Boch-Galhau, Baker, & Morrison, 2010).

Controversial since its inception, proponents of PAS have developed different names for it over the past 2 decades, including more recently parental alienation disorder (PAD) and parental alienation relational problem (Bernet et al., 2010). This syndrome or disorder has been promoted by some (Lorandos, Bernet, & Sauber, 2013; Warshak, 2010), but it is strongly disputed by many others because of the lack of valid and reliable peer-reviewed research regarding PAS/PAD during the last 25 years (Bond, 2008; Kelly & Johnston, 2001; Meier, 2009; Walker & Shapiro, 2010). In fact, PAS/PAD has been discredited by most mental health professionals (Geffner, Conradi, Geis, & Aranda, 2009; Walker & Shapiro, 2010; Zorza, 2009). Additionally, PAS/PAD was never included in any version of the *Diagnostic and Statistical Manual of Mental Disorders*, including the latest fifth edition (DSM-5; American Psychiatric Association, 2013). Further, the use of PAS/PAD is now considered inadmissible in a number of courts (Hoult, 2006), as it does not meet the established legal standard for the admissibility of expert testimony (Bond, 2008).

Although currently we have noticed that the actual term *parental alienation syndrome* is not used as frequently in evaluations and court cases for the previously mentioned reasons, the exact procedures, conclusions, opinions, circular arguments, and recommendations that match what Gardner (1998) had proposed are still being used. For example, in a recent family court case in which two of the authors were involved, no allegations specifically of PAS were made against the mother nor provided in court, but a child victim of abuse was not believed when specific allegations were made and supported by objective evidence and statements. The attorney for the father and an evaluator appointed on the case stated the child was somehow programmed (no techniques or evidence was provided for this) by the mother, who was also abused. They then recommended and the judge adopted specific changes that were exactly the same as proposed by Gardner in his books: immediate removal of the child from his primary caretaker despite his pleas and wishes, sole custody to the father whom the child and mother accused of abuse, no contact by the mother with her child for at least a month, minimal supervised contact after that, and so forth. Such a framework, no matter what label is used, is not supported by any theories or research related to child development, trauma, forensic, child or family psychology. Many evaluators have also reported cases in which PAS recommendations continue to be used in family courts around the world; the assumptions behind it have even influenced child protective services and family court judges (Geffner, Conradi, Geis, & Aranda, 2009).

In summary, there is no accepted theory or research supporting such a syndrome (PAS) or disorder (PAD), nor the recommendations proposed by their promoters. No evaluator should base conclusions or recommendations on this approach.

#### *Denigrating Behaviors and Rejection Due to Abuse*

One parent can engage in behaviors that denigrate the other parent to impact the relationship between a child and the other parent. In conducting child custody evaluations where such an allegation is raised, the evaluator looks for corroborating evidence that distinguishes denigrating behaviors from rejection due to other factors, such as abuse. Evaluators must consider the various factors that could lead to a child rejecting his or her parent. Drozd and Olesen (2004) described several of these factors, including abuse, poor parenting, and normal developmental variation.

In cases where child abuse or PAS/PAD is alleged, evaluators must develop a strong knowledge base regarding the dynamics of child physical, emotional and sexual abuse, as well as exposure to IPV. Not all abused children exhibit the same characteristics. For example, although some children may try to avoid contact with the abusive parent, it is not uncommon for

others to maintain a strong attachment to him or her, even if that might be contraindicated. An evaluator must understand these dynamics to avoid the mistake of ruling out child abuse in favor of parental denigrating behaviors as we have seen evaluators who use a child's desire to spend time with an abusive parent as a reason why the reported abuse could not have occurred.

Evaluators must also be aware of the emotional effects of IPV on children (Geffner, Griffin, & Lewis, 2009). For instance, a child could align with one parent over another because he or she is angry about the separation and/or divorce (Walker & Shapiro, 2010). A child might also feel anger toward and reject his or her parent because of exposure to IPV in the home, even if the child is not a direct target of the abuse (Walker & Shapiro, 2010). Finally, little research evidence exists that demonstrates a parent's ability to successfully program or alienate his or her child against the other parent, especially if that child actually has a good relationship with the supposed alienated parent, nor have any specific techniques been identified that shows how such programming might occur (Geffner, Conradi, Geis, & Aranda, 2009). In summary, allegations of PAS/PAD are particularly suspect when provided as a defense to allegations of IPV or child abuse including child sexual abuse.

#### *Parent Alienation Versus Protective Parenting*

Another major concern is that the child's rejection of a parent is viewed as being the result of the preferred parent's behaviors, which are seen to have caused the child to develop a false belief that the rejected parent is somehow dangerous or bad (Bernet, 2010). In these types of cases, whenever a preferred parent speaks poorly about the rejected parent, it is viewed as an alienating behavior. Further, when the preferred parent reports to child protection or law enforcement agencies about allegations regarding the rejected parent, such reports are viewed as an alienating behavior instead of a protective behavior. This is a no-win situation for the child and for the protective parent and is mainly due to the structure of the American court system (Adam, 2010).

Courts in the United States are often in "silos," meaning they are subject specific. Divorces (custody and visitation determinations) are handled by family courts, whereas charges of child abuse are handled by juvenile courts. If there is a protection order for IPV and/or child abuse, then civil or criminal courts are often involved. Although courts exist in silos, families do not; all of the issues in their lives are interrelated (Adam, 2010). Dealing with one issue has an impact on other issues. For example, if a mother does not report her concerns of child abuse to law enforcement or child protection agencies, then she can be deemed by child protective services or the juvenile court as a "nonprotecting" or "failing to protect" parent, which can result in her child being taken away from her by child protective services. If a mother who

suspects the other parent of child abuse and does report it to the appropriate authorities, and she is involved in a divorce at the time, then this action can be used against her in family court as further proof that she is attempting to alienate the child from the abusive parent.

Similarly, when a parent reports abuse to a child protection agency, the parent is often encouraged to not allow the child to go to the home of the abuser. If that protective parent then does limit the contact with the abuser, this too can be misconstrued later as evidence in family court that he or she is alienating the child from the other parent (i.e., not being a "friendly parent"), even if he or she was following appropriate protocols for child protective services or juvenile courts. We have also seen in several cases a protective parent who is believed to be alienating a child instructed by the family court to not make any further reports of his or her concerns about abuse to any law enforcement or child protection agencies, even if new information comes to light, or else that child will be removed from his or her care and possibly placed with the alleged abuser. This not only places the protective parent in an incredibly difficult situation if further evidence of child abuse is raised, but it also subjects the child to ongoing or new abuse without any protection from the agencies whose job it is to investigate and protect that child.

#### *False Allegations and the Issue of Suggestibility*

The literature suggests that specific to child sexual abuse or other child abuse allegations, only a small percentage (less than 20%) of contested custody cases involve these types of allegations (Brown, Frederico, Hewitt, & Sheehan, 2000; Faller, 2005; Hume, 1995; Thoennes & Tjaden, 1990; Trocmé & Bala, 2005). Thus, the perception that child abuse allegations are rampant in divorce cases is a myth (Geffner & Yukhnenko, 2016). Specifically, a widely held belief suggests that parents, particularly mothers, will make false allegations against the other parent to gain a tactical advantage or to seek revenge. In two studies, results demonstrated that mothers are more likely than fathers to have the abuse allegations substantiated when the abuse is actually investigated (Davis, O'Sullivan, Susser, & Fields, 2010; Johnston, Lee, Olesen, & Walters, 2005).

One of the key issues in the debate about false allegations of child sexual abuse is the confusion surrounding the definitions (Trocmé & Bala, 2005). When a person believes child abuse occurred because of misinterpreting or misperceiving an observation, statement, or behavior, that allegation might not be correct, but unless the person knows it is untrue, it is not a false allegation at that time and therefore should be viewed and defined differently. Further contributing to the confusion is the variability in the labels of investigation outcomes, such as "unsubstantiated" versus "inconclusive." If not