

# TODAY

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# TODAY

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## **Integrating Problem-Solving Court Practices Into the Child Support Docket**

By Judge Jim Rausch and Judge Tom Rawlings

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## Responding to Allegations of Parental Alienation

By Shannon Gaskins, Associate Attorney, and Katy Yetter, Senior Attorney,  
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Although leading legal authorities have rejected parental alienation syndrome (PAS) as inadmissible scientific evidence,<sup>1</sup> many litigants continue to use PAS as a litigation tactic when submitting evidence regarding the best interest of the child in contested custody cases.

Parents may use PAS and its evidentiary cousins to support assertions that the other parent is engaging in alienating behaviors in order to thwart their parenting. Examples of alienating behavior allegations are that one parent:

- directly undermines the child's relationship with the other parent;
- actively denigrates the other parent;
- encourages the child to express negative sentiments about the other parent to an assessor or the court;
- fails or refuses to facilitate access or contact with the other parent;
- or arranges activities that interfere with contact with the other parent.

While these behaviors are not always proof that one parent is seeking to alienate the child's affection from the other parent, according to participants at a recent conference seminar on child alienation,<sup>2</sup> courts are being encouraged to factor in such "alienating" behavior when making custody determinations in "high-conflict" cases.

In family court, "high-conflict" cases are marked by the parties' mutual mistrust of each other, leading to cycles of reaction and counter-reaction, which further erode the possibility of trust between parties.<sup>3</sup> However, in cases involving the abuse of one parent by the other or the abuse of the child by a parent, allegations addressing such abuse should not be confused with the alienating behaviors that may occur in high-conflict cases. Abuse cases may have high-conflict components, but they require a different set of considerations in order to promote safety for the victim parent and child.

Many custody cases that involve domestic violence have never been properly screened or assessed for abuse of an adult partner or child. A careful judge, however, will observe when one partner exhibits abusive, even violent, attitudes and behaviors designed to exert inappropriate control over other family members.<sup>4</sup> If appropriate screening does not

take place, the court may "see" a high-conflict case, rather than a domestic violence case. Accordingly, many of the safeguards that would normally be in place for victim parents are not in place because the case has been inappropriately labeled "high conflict."

Considering the context of the behavior is a necessary step in determining whether alienation is occurring or whether one parent is exhibiting protective behavior. If a case is incorrectly determined to be high conflict, rather than a domestic violence case, "protective parenting" behavior exhibited by a victim parent is easily interpreted to be "alienating behavior." In a true high-conflict case, a par-



ent may be inappropriately angry about the other parent's interactions with the child or children. This same parent may also be inappropriately focused on manipulating the outcomes of the civil matters. In cases involving domestic violence, a parent who reports that the other parent is abusive is trying to alert the court to dangers facing one or more family members. If the court does not look carefully at the evidence or context of the case, the abused parent may look very much, on the surface, like the manipulative parent. The unfortunate result is that a victimized parent may be accused of demonstrating "alienating" behavior when that parent's real goal may be to use "protective parenting behavior" to ensure the safety of their child or children. In fact, it is appropriate for parents to try to protect themselves or their children from expo-

sure to violence, even when it means limiting the other parent's contact with the children.<sup>5</sup> Consider the following scenario:

*Two years ago, the court awarded joint custody of 4-year-old Sallie to Dad, despite claims that Dad had been emotionally and physically abusive toward Mom. Mom has primary physical custody, and the child visits Dad every other weekend and for a month during the summer. A short time after the custody hearing, the child tells Mom that she no longer wants to visit Dad. Sallie starts to wet her bed and becomes emotionally distraught prior to visits with her dad. Mom takes Sallie to see a child counselor and files to modify the visitation order to cut back on the frequency of visits. Dad objects, and in the response states that Mom has "alienated" the child and is interfering with developing a healthy relationship with his daughter. Furthermore, Dad alleges that Mom is not acknowledging the importance of both parents being involved in the rearing of a child, is lying about the abuse, and is using the child and the custody modification to punish him. In this case, there are no medical records, criminal history, or anything else to support her allegations.*

In this scenario, the mother's actions were not alienating behaviors, but rather typical protective parenting behaviors. The child's regressive behavior, manifested by bedwetting, is a red flag of which the court should take careful note. It may be that the court needs more information to be able to determine whether this is a regression in response to abuse. However, without the proper screening for domestic violence and without complete evidence with which to make a decision, the court may very easily interpret these behaviors and actions to be alienating tactics.

Following are a few actions or behaviors that are often red flags indicating domestic violence that are, unfortunately, easily misinterpreted by the court and/or evaluator as "alienating" behavior or behavior that damages a victim's credibility:

- The custodial parent appears overprotective or clingy toward the child or children.
- The parent will not bring the child or children for visitation or suddenly stops doing so, even if facing contempt.
- The parent appears distrustful of the court

or any agency involved in the process.

- The parent is angry.
- The child does not want to visit the other parent.
- There are allegations of the child exhibiting a change in behavior.
- The parent moves to another state or undisclosed location contradicting a court's order.

There are numerous ways to determine whether it is more likely that a parent is protective or alienating. First, from the very beginning, all custody cases should be assessed for domestic violence by either the court or by a professional trained in the dynamics of domestic violence. One way to do this is to determine whether one or both parties ever petitioned or received from the court a protective order or restraining order against the other party and whether there are any relevant

criminal charges. Second, it is critical that the court continues to ask questions directly of the parties or their representatives if there are any allegations or suspicions of abuse, particularly if there are allegations of abuse and the parties entered a consent agreement about custody. A careful, fact-based inquiry is likely to yield testimony that is more accurate and relevant.<sup>6</sup> Finally, if there is evidence of abuse, the court should consider measures to ensure the safety of both the child and the victim parent, such as supervised visitation or exchange.

#### END NOTES

<sup>1</sup> NCJFCJ. (2006). *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*, 24.

<sup>2</sup> Association of Family and Conciliation Courts, *Complexities of Child Alienation: From Assessment to Options for Intervention*, June 30-July 2,

2007 (Washington, DC). Attendees and presenters included mental health providers, researchers, the judiciary, and several special interest groups. Speakers who presented on the subject of alienation stated it was an issue that is increasingly being alleged in contested custody cases.

<sup>3</sup> Jaffe, Peter G., Crooks, Claire V., & Wong, Hon. Frances Q.F. (2005). "Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children's Best Interest," *Journal of the Center for Families, Children and the Courts*, 6, 81, 83.

<sup>4</sup> *Id.*

<sup>5</sup> NCJFCJ, *supra* note 1, at 25, citing L. Drozd & N. Oleson. (Nov. 2004). "Is It Abuse, Alienation, and/or Estrangement? A Decision Tree," *Journal of Child Custody*, 1, 65-106.

<sup>6</sup> *Id.*

## Town Hall Meeting Held on Child Custody Determinations in Cases Involving Domestic Violence

As part of NCJFCJ's 70<sup>th</sup> anniversary celebration, the Family Violence Department hosted a community meeting on Oct. 12, 2007 entitled "Town Hall Meeting on Child Custody Determinations in Cases Involving Domestic Violence: Balancing Access and Safety." The purpose of the meeting, held in NCJFCJ's headquarters building on the University of Nevada, Reno campus, was to invite community members to a public forum where issues of domestic violence could be discussed, allowing the public to share their experiences and to learn from the panel of experts.

The panel for the meeting included Judge Peter Macdonald (ret.), who served as a district court judge in Kentucky from 1978 until his retirement in 2003; Victoria Campbell, a long-time reporter at Reno's KRNVTV News Channel 4, assigned to the Crime and Courts beat; former NCJFCJ staff member Amy Saathoff, now Director of Development and Community Relations with the Committee to Aid Abused Women in Reno; Caryn R. Sternlicht, an attorney at Washoe Legal Services, who provides direct legal services to victims of domestic violence; and family law attorney Dixie Grossman, an associate of Fahrendorf, Vilorio, Oliphant, & Oster LLP.

Approximately 70 community members attended, including

family court judges, attorneys, CASA representatives, psychologists, and social workers. Judge Macdonald moderated the discussion and began by describing his experiences with the difficulties and complexities of judicial decision making in cases involving domestic violence, children, and custody. The panel's opening remarks

were used as a springboard into discussions with the audience on topics ranging from batterer intervention programs to the role of the judge in the courtroom and in the community, and how much information is necessary to help the judge make educated and safe decisions. Although the event was scheduled for two hours, the lively and interested participation between audience and panel members could have gone even longer if time had allowed. A reception was held immediately afterward to give attendees a chance to become acquainted and to further discuss the issues.

"The event exceeded our expectations," said Danielle Pugh-Markie, FVD Program Manager. "We are hoping to turn this into an annual event."

For more information on how to host a town hall meeting in your community, please contact Danielle Pugh-Markie at (775) 784-6967 or [dpugh-markie@ncjfcj.org](mailto:dpugh-markie@ncjfcj.org).



Judge Peter Macdonald answers a question from the audience as panel members Amy Saathoff, Dixie Grossman, Caryn R. Sternlicht, and Victoria Campbell (left to right) listen.