

Child Custody Disputes - Parental Alienation Syndrome

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - May 2010

Therapists and counselors who have been involved with patients or clients embroiled in a child custody battle may be aware of the controversy surrounding parental alienation syndrome, and its use or attempted use by practitioners who may testify as expert witnesses, such as those who act as child custody evaluators. For those who may be unfamiliar with this topic, parental alienation syndrome involves a disturbance in a child whose primary manifestation is a child's unjustified campaign of denigration against, or rejection of, one parent, due to the influence of the other parent combined with the child's own contributions. According to Dr. Richard Gardner, M.D., the originator of the term, the "disorder" (not in DSM) arises almost exclusively in the context of child custody disputes. There is great controversy throughout the country surrounding this "syndrome," both with respect to its reliability and admissibility into evidence, and with respect to the recommended treatment for the affected minor.

A bill has been introduced in the California Legislature that takes direct aim at such testimony. This bill provides, in part, that unproven, nonscientific theories, including but not limited to, alienation theories that assume that a child's report of physical or sexual abuse by one parent is influenced or fabricated by the other parent, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The bill would prohibit the court from relying upon an unproven, unscientific theory and would prohibit the court from accepting into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding. The bill (Assembly Bill 612) also provides that nothing in its provisions shall limit the consideration of actual evidence, behaviors, statements, or conduct by either parent or by the child.

This bill is opposed by the Board of Behavioral Sciences, who licenses marriage and family therapists, clinical social workers, and soon, professional counselors. It is also opposed by the California Judges Association, the Family Law Section of the State Bar, and the California Association of Marriage and Family Therapists. The bill's sponsor is the California Protective Parents Association, a group formed in 1998 whose stated mission is to protect children from incest and family violence through research, education and advocacy. The primary objection to the bill is that it would remove the judge's discretion in these contentious matters. If a child custody evaluator was of the opinion, based upon interviews and other information, that a child was coached to make false allegations of sexual or physical abuse, opponents of the bill believe that such testimony should be allowed. The general fear is that this bill would prevent or inhibit such testimony from being admitted into evidence.

Some mental health professionals believe that testimony about parental alienation syndrome may tend

to oversimplify the causes of alienation and lead to confusion in the treatment of alienated children. They also believe that there is not an adequate scientific foundation for use of the word "syndrome." Even though there is some recognition of the syndrome by the courts, many expert witnesses do not use the term when testifying. Instead, they may simply testify to their beliefs about whether or not the claims of abuse made by one parent constitute a fabrication, and then may testify about the bases for those beliefs. With respect to the issue of the treatment of a child who has been diagnosed with the disturbance or disorder of parental alienation syndrome, there exists considerable controversy regarding the appropriate custodial arrangement during the course of such treatment. The question often presented is whether it is appropriate to award primary custody to the alienated parent and severely restricted contact between the child and the parent who is believed to be the alienating parent.

I have only scratched the surface of this controversial topic. How do the courts in your state of practice handle testimony about parental alienation syndrome? Have there been similar legislative efforts to prohibit such testimony in your state?