



Custody collaborations

Lawyers and psychologists work together to keep children's best interests in mind.

BY AMY NOVOTNEY • *Monitor* staff

Ensuring that a child's best interests are protected during high-conflict child-custody cases is a challenge for the U.S. court system, but attorneys and psychologists are working together to better promote the well-being of children embroiled in these battles.

That was one of the chief points made by attorney Linda D. Elrod, JD, during the opening session of a conference hosted by APA and the American Bar Association (ABA) Section of Family Law.

"To change the custody system is going to require a unified effort, but we must become more child-focused in actions as well as words," said Elrod, who directs the Washburn University Law School Children and Family Law Center and who was one of more than 70 panelists who explored the intersection of psychology and law in contested child-custody cases.

Nearly 600 people from 45 states and five countries attended the April 30–May 3 conference in Chicago — the first of its kind since 1997. Through a series of 35 programs, attendees weighed in on the varied but distinct roles psychologists play in divorce and custody cases, including as evaluators of psychological functioning of children and parents, expert witnesses with regard to the child's best interests, litigation consultants, parenting coordinators and divorce coaches and therapists for the children, parents or both. They also participated in sessions on parental alienation, psychological testing in child-custody evaluations and a mock custody hearing.

Psychologists and attorneys also discussed the merits of alternative conflict resolution methods — such as the use of parenting coordinators and child's attorneys — as well as the importance of interventions that assist families in quickly resolving conflict, said Mary A. Connell, EdD, a Texas forensic psychologist and a member of the APA/ABA steering committee on children, families and divorce, which helped organize the conference. The single best predictor of a child's emotional well-being is the level of conflict in the home, she said.

"Yet we have very few studies that tell us much about how children in various combinations of parental time-sharing

arrangements are turning out 10 or 15 years later," Connell said. This, she added, may be where working closely with lawyers provides the biggest benefit to psychologists. "Attorneys can help us craft the questions to guide this research for the next decade."

Evaluating allegations of alienation

One hotly debated area that participants said is in need of more psychological research is "parental alienation," a term used to describe behaviors by one parent that can lead a child to express hatred and resistance toward the other parent. Psychologists who evaluate child-custody cases for signs of parental alienation must first examine a child's behavior and his or her relationship with both parents before homing in on the behaviors of the aligned parent, said Nancy Williams Olesen, PhD, a San Rafael, Calif., psychologist who has worked with divorcing families for more than 20 years.

High-conflict custody cases are frequently complex and can involve disputes over alimony and child-support payments, visitation schedules and allegations of abuse, among other thorny issues. Experts say that it should be recognized that during many high-conflict divorces, both parents can engage in alienating behaviors at one time or another. There is also concern that the charge of parental alienation is sometimes used as a shield by abusers.

"Before you do anything, you start with evaluating the possibility that there is abuse of some kind," Olesen said. "It should not be called alienating behaviors in the context where they have good reason to do it." Instead, psychologists must work to identify abuse and educate victim parents on how to safeguard children against it.

She also advised evaluators to avoid the broad, overly simplistic label of parental alienation syndrome. This so-called syndrome was popularized by psychiatrist Richard A. Gardner, MD, but there is no evidence within the psychological literature of a diagnosable parental alienation syndrome. The multifaceted nature of family and custody issues can cause angry, hurt children in the throes of a high-conflict divorce to

resist visitations and develop affinities for a certain parent, and this behavior, she said, does not necessarily mean the child has been alienated from the other parent.

“There’s a big difference between a 15-month-old who cries upon leaving the primary caretaker and a 10-year-old who is saying, ‘I want to rip my father’s DNA out of every cell in my body,’” Olesen said.

Yet while “parental alienation may not be a syndrome, it is certainly going on,” noted Olesen’s co-presenter, Chicago family lawyer Joy M. Feinberg, JD, who discussed such parental behaviors as repeatedly canceling visits, belittling the other parent in front of the child and refusing to give the child letters or phone messages from the other parent. These actions, Olesen said, indicate attempts to control not just a child’s behavior, but his or her thoughts and feelings as well. This may lead a child to use wooden, brittle and repetitive phrases and descriptions of hatred toward the other parent and to express little guilt about their feelings, she said.

Both attorneys and psychologists often witness this behavior in contested custody cases, Feinberg said. And while research on the effects of alienation on children is spotty, Olesen said she believes children in these situations may develop black-and-white thinking about relationships, fail to develop an individual sense of self and lose a relationship with a parent who could

have provided an alternative life view.

Psychologists and attorneys concerned about a child’s well-being in these types of high-conflict situations must initiate timely and inclusive evaluations, interventions and court actions with the goal of repairing and healing parent-child relationships, Olesen said.

“These parents need to be told how to behave,” she said. “Therapists and attorneys can do a lot to head off cases that are heading in the direction of alienation.”

Other experienced family therapists warned of the need to be careful about bringing patients together if a history of abuse has been demonstrated or, in some cases, is even suspected.

Testing: Consider all the factors

The use of psychological testing in child-custody evaluations may provide helpful information, but many people, particularly attorneys and judges, place too much confidence in the tests’ outcome. Therefore, psychologists must consider which tests will be developmentally, culturally and linguistically appropriate to use in a given situation, and fully disclose a test’s limitations when offering results, said Randy K. Otto, PhD, a professor of mental health law and policy at the University of South Florida, and chair of the APA/ABA steering committee on children, families, divorce and custody.

When selecting which of the many psychological tests to use in a child-custody case, psychologists should reflect on the issues in the case, what the court needs to know and whether the test can provide valid data about these concerns, Otto said. Often, he noted, custody issues are hard to quantify, and test results suggest hypotheses, not definitive answers. In these situations, psychologists should use testing to create a hypothesis and then attempt to corroborate their theories with other evidence by interviewing third parties and reviewing medical and mental health records. In the end, Otto noted, psychologists must ensure that psychological test results don’t get over-interpreted.

“Psychologists must remember that they are there to help the court tease out and understand the issues, regardless of who hired them,” Otto said. “They have a responsibility to the process and the whole truth.”

Duties of Daubert

Psychological evaluators in child-custody cases should not assume that the judges they work with are experts in child



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An ongoing collaboration

The APA and the American Bar Association (ABA) Section of Family Law conference concluded with reports from seven APA/ABA working groups charged with exploring legal, psychological and professional interactions issues and the development of collaborative projects. The working groups, made up of lawyers and psychologists, are devoted to: psychological evaluation and assessment; custody and parenting plans; issues of alleged abuse, neglect and endangerment; representing and advocating for children; ethics and standards; psychological and legal interventions with parents, children and families; and alternatives to current models and processes.

The groups will develop public informational materials on these topics, as well as professional publications and training materials for attorneys, psychologists, judges and the many others involved in family court cases. They represent the continuing need for collaboration between these two fields, said Gregg M. Herman, JD, chair of the ABA section of family law.

"The Chicago conference was designed as just one step on the path of an ongoing relationship between lawyers and psychologists who practice in the family law area," he said. "These working groups will continue to exchange ideas and work on projects of common concern, with the goal of improving the field of family law and most importantly, to minimize the effects of family dissolution on children."

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development or family systems, Judge Edward R. Jordan, JD, told psychologists during the conference's mock custody hearing.

"Each case has its own dynamics and calls for its own remedy," Jordan said. "Psychologists should view every trial on custody as a teaching experience."

Jordan and Judge Maxine Alridge White, JD, shared tips for psychologists and attorneys on how to find qualified psychological experts and what judges look for in an expert witness. The judges also provided psychologists with schooling in the legal principles enunciated in the 1993 case, *Daubert v. Merrell Dow*, in which the U.S. Supreme Court demanded that expert witnesses provide demonstrable knowledge and adhere to science and reasonable professional certainty when expressing opinions.

White reminded psychologists that they must be able to provide fact-based information and the specific professional guidelines they followed to reach their recommendations when testifying. In addition, she noted, psychologists need to use common sense on the witness stand, especially during tough cross-examinations.

"Witnesses can give great information, but the conclusions they come to [might] make no sense," she said. "The main thing I look for is the amount of information given — not just the facts of what the witnesses said or what the report showed — but what that information means in

light of the question that's before the court." ■

This reporting represents the perspectives of the conference presenters. It is not an APA policy statement.

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