

Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations

Meeting Summary – June 25, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its second meeting of the 2019 interim on Tuesday, June 25, 2019, in Room 101 of the Judiciary Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Susan C. Lee
Delegate Vanessa E. Atterbeary
Ms. Melissa Brown for Senator Mary Beth Carroza
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Anne Hoyer
Ms. Joyce Lombardi
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting by thanking everyone in attendance. He advised that the workgroup intends to continue meeting every two weeks in Annapolis. The chair expressed satisfaction with the information exchanged at the workgroup's first meeting and asked members to review the minutes from the prior meeting and send any suggestions for additions or edits to Brittany Luzader. He introduced himself as chair of the workgroup and asked members and attendees for their introductions.

Testimony from Protective Parent

The committee next heard from "Faith," a mother of three and a survivor of domestic violence. Faith became an advocate when she left her relationship after 14 and a half years of physical and emotional abuse committed against herself and her children by her ex-husband. Faith shared with the committee that over a four-year period after leaving her ex-husband, she had three proceedings in criminal court yet had to attend family court 63 times. Although these proceedings were in a different state, she believes many of the things she encountered are present in Maryland as well. Although her ex-husband's parental rights were eventually terminated, she questions why it took so long. While some of the decisions made in her case were in the best interests of the children, there were too many mechanisms in the law, such as appeals and modifications, which

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allowed an abuser who had no interest in rehabilitating to come before the court multiple times. Although she was never allowed to be the voice of her children in court, she can be that voice now.

She read passages from the book she wrote, including pieces written by her son and daughter, and asked the workgroup to remember that it must serve as the voice for the children whose parents have not left abusive situations. She ended by expressing gratitude for the address confidentiality programs that have been established in numerous states. Secretary Wobensmith thanked Faith and introduced the next speaker.

Presentation by Professor Joan Meier

The next speaker, Professor Joan Meier, is a clinical law professor at George Washington University School of Law and the founder and legal director of Domestic Violence Legal Empowerment and Appeals Project (DV LEAP). Professor Meier has published widely on domestic violence and custody and received a grant in 2015 from the National Institute of Justice to conduct empirical research on child custody outcomes in cases involving parental alienation and abuse allegations.

Professor Meier advised that DV LEAP does appellate work all over the country (including in the U.S. Supreme Court) and that the vast majority of cases involve mothers who are finding it impossible to keep their children safe during the course of custody litigation. DV LEAP also does training for judges, attorneys, and other professionals. When DV LEAP was founded in 2003, it was with the intent to be an appellate resource in the domestic violence field; however, within a few years, they were inundated with requests for help with custody cases and parental alienation was often a key factor. She noted at the time that there was a gulf between family court professionals and those in the abuse field and indicated her appreciation that this workgroup includes both domestic violence advocates and child abuse advocates.

When commencing her research, she originally wanted data on alienation claims and how they impact custody. Initial hypotheses were as follows: (1) courts are skeptical of mothers' abuse claims, resulting in a loss of custody; (2) alienation cross-claims fuel the rejection of abuse claims and custody losses by mothers; and (3) alienation theory is highly gender-biased. Following a pilot study of 240 cases in which findings included that child sexual abuse claims are rarely believed by courts, her team was awarded funding to study all electronically published court opinions in child custody cases involving abuse or alienation claims over a 10-year period (2005 to 2015). The research team eventually narrowed the dataset to approximately 4,300 cases and created over 100 codes to be used to analyze results.

Professor Meier next walked the workgroup through selected aspects of her research. First, for the paradigm cases in which the mother alleged abuse and the father claimed alienation, the team analyzed whether the abuse claims were credited and whether or not the mother lost custody

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(defined as a switch of primary custody from mother to the father). The team found that child abuse, and particularly child sexual abuse, was credited far less than domestic violence abuse cases and that overall courts credited 41% of abuse claims. When alienation was cross-claimed, only 23% of abuse claims were credited. In response to a question, Professor Meier briefly explained parental alienation to be a theory that when a parent (typically a mother) alleges abuse against the other parent, they are doing so not because the abuse happened but in an attempt to drive the other parent out of the family. Professor Meier noted that in reviewing 51 cases in which child sexual abuse was claimed, only one child was believed when alienation was cross-claimed. However, objective research has suggested that up to three-fourths of sexual abuse allegations in divorce are true.

The presentation next examined custody outcomes for cases in which alienation was not alleged as a defense and demonstrated that if a mother raises abuse of any type in a custody case, there is a one in four chance of losing custody. Even in cases in which the abuse is believed by the court, a mother may still lose custody. For example, in 14% of domestic violence cases and 19% of child physical abuse cases, primary custody was still transferred from the mother (who raised the abuse allegation) to the father (the abuser). Custody was not transferred in cases in which child sexual abuse was believed. Professor Meier noted that the study is limited in its ability to explain why courts made decisions in these cases (*e.g.*, the abuse may have been deemed as minor, the mother may have had other difficulties, *etc.*). Professor Meier next reviewed outcomes when alienation is claimed and showed that a mother's chance of losing custody increases significantly. The data demonstrates that claims of alienation are enhancing bad outcomes for mothers who allege abuse. When alienation was credited by the court, custody losses by mothers skyrocketed (*e.g.*, mothers lost custody in 60% of domestic violence cases and 79% of domestic violence/child abuse cases). There were no cases in which the court believed alienation and also that child abuse had occurred, which demonstrates how courts believe that alienation is a strategy to drive fathers out. However, there were instances in which a court believed both alienation and domestic violence. She indicated that the team pondered how widely to publish the findings as they recognized that the findings basically provide a roadmap for fathers accused of abuse in custody cases by demonstrating the power of an alienation defense.

The presentation then examined gender in custody cases. In general, alienation claims were shown to be more powerful for fathers; when accused of alienation, mothers have approximately twice the odds of losing custody compared to fathers. Further analysis demonstrated that when fathers accuse mothers of any type of abuse and the mothers cross-claimed alienation, the rate of custody loss for fathers was not impacted. However, relative gender parity was found in two circumstances. In examined cases in which no abuse was claimed, although fathers lost custody to mothers less often than vice versa, the results were not statistically significant. Also, when courts believed the alienation claim, fathers and mothers lost custody at identical rates.

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Professor Meier next moved to a summary of outcomes in cases that included the involvement of either a guardian ad litem (GAL) or a neutral custody evaluator. Mr. Paul Griffin noted that in Maryland, child advocates/child attorneys were rarely used (generally only for older children) and that best interest attorneys were more frequently appointed. The research showed that when GALs were present, mothers were more likely to lose custody. By contrast, a GAL had no significantly statistical impact on a fathers' likelihood of losing custody. She noted that the findings were counterintuitive to what you would expect (*i.e.*, it would make sense to want a GAL involved as you would expect them to be beneficial, however the findings seemingly indicate a GAL bias against mothers who claim abuse). Mothers were also more likely to lose custody when an evaluator was present, yet the presence of an evaluator had no statistically significant impact on a father's loss of custody.

Professor Meier concluded by noting the limitations of the study. Because the study is comprised primarily of cases that were appealed, it may not be fully representative of typical trial court decisions. Furthermore, the study does not demonstrate that the rejections of abuse claims within the cases are incorrect, only that such rejections are very prevalent.

Questions and Group Discussion

Numerous members thanked Professor Meier for the work that she has done and were particularly grateful to her for getting the data to back up what has been observed anecdotally. In response to a question from Ms. Joyce Lombardi, Professor Meier indicated that the research was not broken down by the age of the child. However, all of the data for the Maryland cases (including the associated codings) can be provided to the group for further analysis. She also noted that the research team created codes for corroboration and child welfare involvement.

Because she recognizes the potential damage done to children when allegations are not brought to light, Ms. Laure Ruth expressed dismay that attorneys representing survivors of domestic violence may find that not including child abuse allegations may be strategically advantageous in some cases. Professor Meier noted that parties must weigh the risk of not protecting the child against the risk of losing all access to child, which is the punishment a mother could face if the court decides she is falsely alleging abuse. Professor Meier indicated that based on her experience, the findings of child protective services' agencies are not a good measure of the truth as other factors, such as the avoidance of labor-intensive litigation, are often involved. Professor Meier noted the importance of experts on child sexual abuse and getting an independent evaluator. She also noted a technique known as abuse proofing. This is when a therapist has both parents come in and swear to the child that abuse is wrong and no matter what happens in the future, the child should report it. Ms. Ruth stated how valuable Professor Meier's presentation would be for family law judges and asked representatives of the Judiciary to explore this.

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Ms. Camille Cooper asked Professor Meier to provide a brief overview of the origins of Dr. Richard A. Gardner and parental alienation theory. Dr. Gardner had previously done some credible work on divorce and children yet turned at some point to focus on the issue of child sexual abuse in custody and divorce cases. He developed the theory of parental alienation syndrome (PAS) which was based solely on his experiences evaluating and testifying in cases and not on empirical data. Parental alienation syndrome claimed that when a mother comes to court alleging that a father has sexually abused a child, it is very likely that she is doing so only because she is vengeful and wants to drive the father away and not because it is true; however, allegations were likely true if they were not made in connection to a court procedure. Furthermore, behaviors that professionals know to be indicators of abuse were instead explained by Gardner to be signifiers of PAS. PAS initially gained traction, particularly in the family courts. There were also documented examples of Gardner condoning pedophilia and protecting child sexual abusers. Although the courts have now moved away from parental alienation as a syndrome, they continue to recognize parental alienation claims. Delegate Kathleen M. Dumais shared a prior experience in litigating a case in which Gardner testified. She also noted the difficulty in subjectively evaluating custody cases.

When asked by Mr. Griffin if she had any theories regarding the presence of gender bias in these cases, Professor Meier indicated that she does not believe gender bias has been eradicated from our culture in general. In response to another question, she advised that while some studies have shown that physical abuse is committed equally by males and females within relationships, the studies are not differentiating between types of violence (*e.g.*, self-defense, violence committed with the intent to control, *etc.*).

Ms. Cooper advised that statistics she has seen indicate that over 80% of individuals received a negative reaction when they disclosed abuse for the first time. Professor Meier noted that courts are ignoring links between an interest in child pornography and child sexual abuse. Ms. Joyce Lombardi stated that in addition to gender bias, there is a strong bias against believing children. Ms. Lombardi stated that adults not believing children is the root of problem because ultimately in child abuse cases it is the child alleging abuse. It is unfortunately easier to believe a mother is lying than that a father is sexually abusing his children. Professor Meier remarked that there is also evidence of courts wanting to reward fathers who are seen as fighting for their children. She thinks it is important to train judges on implicit bias and vicarious trauma and to allow judges to hear from different voices, including child abuse advocates and individuals who work with internet crime, and not just attorneys for mothers. Ms. Claudia Remington also noted the importance of looking at overall social norms regarding abuse and framing recommendations in a way that is not seen as just criticizing the courts. Senator Susan C. Lee noted the significance of having evidence-based data and the value of the workgroup's experienced members. Professor Meier advised that the workgroup's product may be the pilot legislation that gets used around the country, as other states are looking into how to amend custody laws to properly address the federal resolution.

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Secretary Wobensmith thanked Professor Meier and members for the discussion and the presentation and advised that the workgroup would likely meet again in two weeks. He will begin to develop a list of topics for the workgroup to study and asked members to provide input when he does so.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting, available at <http://dls.maryland.gov/policy-areas/workgroup-study-child-custody-child-abuse-domestic-violence>, is also available and constitutes the official minutes of the meeting.