

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

### **Law**

Expert testimony and opinions are governed by section 907.02, which states as follows:

(1) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, **if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.**

The language adopted in 2011 appears to intend Wisconsin’s standard to mirror the Daubert standard applied in federal courts. See *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993).

### **Argument 1:**

#### **Parental alienation is not admissible under “Reliable principles and Method”**

Parental alienation (PA) is a controversial and disputed proposed mental condition whereby children unjustifiably reject one parent because of the other parent’s influence. One parent often raises parental alienation in family court when the other parent makes an accusation of domestic abuse. Despite appearing in legal discourse, no professional organization officially recognizes either parental alienation or the related concept of parental alienation syndrome.

All generally recognized psychiatric syndromes are compiled in the American Psychiatric Association’s Diagnostic and Statistical Manual (“DSM”). Proponents of PA petitioned for the addition of PA (or one of derivatives) prior to the published DSM-IV. Their proposal was denied. Prior to the DSM-V being published, once again proponents of PA proposed its addition. It was denied. I do not believe the court should consider a topic that was twice rejected by the leading professional association in the matter. **PA is not in the DSM-V.**

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

**PA is not recognized as a valid medical syndrome or terminology by the American Medical Association, the American Psychiatric Association, or the American Psychological Association.**

In February 2020, the WHO declared that it had removed this pseudo-scientific concept from its index and classification. They withdrew any mention of parental alienation from the International Classification of Diseases (ICD-11).

The Oregon Board of Psychology in March 2022 sanctioned a psychologist. The psychologist diagnosed parental alienation and recommended reunification therapy for the children. The board found the leading authority for psychology standards (DSM-V) did not include PA. They found that reunification therapy could have been harmful to the children and therefore found the psychologist negligent.(4)

The term PA nor any derivative is not mentioned in the comprehensive Domestic Abuse guidebook for Wisconsin.

The National Council of Juvenile and Family Court Judges (NCJFCJ) published: Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide, by Dalton, Drozd, and Wong (2006) page 24. **The recommendations clearly state PA does not meet admissibility standards.** Stating the following:

### Parental Alienation and the Daubert Standard:

In contested custody cases, children may indeed express fear of, be concerned about, have distaste for, or be angry at one of their parents. Unfortunately, an all too common practice in such cases is for evaluators to diagnose children who exhibit a very strong bond and alignment with one parent and, simultaneously, a strong rejection of the other parent, as suffering from “parental alienation syndrome” or “PAS”. Under relevant evidentiary standards, the court should not accept this testimony. The theory positing the existence of “PAS” has been discredited by the scientific community. In *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999), the Supreme Court ruled that even expert testimony based in the “soft sciences” must meet the standard set in the Daubert case. **Daubert, in which the Court re-examined the standard it had earlier articulated in the Frye case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. “Parental Alienation Syndrome” does not pass this test. Any testimony that a party to a custody case suffers**

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

**from the syndrome or “parental alienation” should therefore be ruled inadmissible and/or stricken from the evaluation report under both the standard established in Daubert and the earlier Frye standard.**

The National Council of Juvenile and Family Court Judges (NCJFCJ) also published: A Judicial Guide to Child Safety in Custody Cases, by Bowles, Christian, Drew, and Yetter (2008). The article argues against the admissibility and makes the following statement regarding PA theory:

The discredited “diagnosis” of PAS (or an allegation of “parental alienation”) ... inappropriately asks the court to assume that the child’s behaviors and attitudes toward the parent who claims to be “alienated” have no grounding in reality. (emphasis added) (Bowles et al., 2008, p. 13)

PA lacks any indicia of general acceptance by major medical institutions making it inadmissible under Wisc Stat 907.02 (1) and Daubert standard.

### **Argument 2:**

**PA is not admissible under  
“the witness has to apply the principles and methods reliably to the facts of the case”**

Even proponents to PA, acknowledge domestic abuse and other causes for justified alienation have to be ruled out first. If abuse is found the correct terminology to describe the mother’s response would be “**protective parenting**”. Andrew Patch did not do a domestic violence assessment nor rule out other causes that justified the alienation.

The core premise is that abuse must be fully evaluated before alienation theory may be considered. Otherwise protective parenting behaviors will be mistaken for alienating behaviors. The motive behind protective parenting is in stark contrast to the motive in alienating behaviors. If followed faithfully, this approach would exclude **PA labeling from all valid abuse cases, except insofar as alienation is a part of the abuser’s pattern**. Typically the non-abusive

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

parent/protective parent is preferred by the child for a variety of reasons. The child’s strong preference for the protective parent can also mask the abuser’s true alienating behaviors.

Coming from researchers who specialize in alienation, this empirical statement – that men who abuse are often also men who intentionally demean the mother and teach the children not to respect her – is powerful confirmation of the experiences of many women that have claimed abuse and in return been accused of alienation.

### **Introduction**

Recently, federally funded research has demonstrated that custody evaluators tend to fall into two categories: those who know about domestic violence and consider it important in custody litigation, and those who do not. This research confirms that those who do not have an in-depth understanding of domestic violence also tend to label abuse allegations alienation and rarely identify abuse as a serious concern. Experts without adequate training in domestic violence are confusing protective parenting with parental alienation. Experts are making decisions that are causing harm to children. Court experts operate under the false notion that forced placement is meaningful even in unpredictable environments. The experts are also recommending unsupervised overnight visits along with the misleading concept of constructive co-parenting when the abuser has victimized the other parent too. **(See Saunders study)**

Medical and judicial organizations have recognized this problem and are working together to make a change. Local and Federal laws are being rapidly implemented to prevent this process from continuing. Medical and Judicial organizations are working together to prioritize the child’s best interest while spreading education and awareness nationally. **(See Kayden’s Law)**

**Kayden’s law (March 2022)**

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

U.S. House of Representatives passed the Violence Against Women Act Reauthorization Act (VAWA) with broad bipartisan support on March 2022. The VAWA Reauthorization includes Kayden’s Law.

Kayden's Law takes the much-needed steps to improve our response to the well-documented, widespread failures of state courts to protect children in custody proceedings. It increases funding for states that put laws into place protecting child safety in any court proceeding affecting child care and custody. Kayden’s Law will strengthen our state courts’ abilities to recognize domestic violence and child abuse allegations based on valid, admissible evidence so that courts can enter orders that protect and minimize the risk of harm to children. Requirements include:

**Prioritize Child Safety.** A court may not remove or restrict a child from a parent or litigating party who is competent, protective, and not physically or sexually abusive, and with whom the child is bonded or to whom a child is attached, solely in order to improve a deficient relationship with the other parent of a child.

**Mandate Judicial Education.** All relevant court personnel involved in child custody proceedings, including judges, magistrates, guardians ad litem, best interest attorneys, counsel for children, custody evaluators, masters, and mediators are required to complete at least 20 hours of initial training and at least 15 hours of ongoing training every 5 years on domestic violence and child abuse.

**Limit Evidence to Qualified DV or Child Abuse Experts Only.** Expert evidence from a court appointed or outside professional relating to any alleged abuse may be admitted only if the professional possesses demonstrated expertise and clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature.

**Saunders Study**

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

The Saunders’ Study was commissioned by the National Institute of Justice to determine whether evaluators, judges and lawyers have the necessary knowledge to respond effectively to domestic violence custody cases.

The Saunders’ Study found that professionals without specific knowledge or training tend to focus on the myth that mothers frequently make false reports and unscientific alienation theories. These mistaken beliefs lead to recommendations and decisions that harm children. Many of the worst decisions made in family courts are based on focusing on exactly these mistaken beliefs.

Evaluators in the study were asked to make recommendations concerning vignettes provided by the study. Their response demonstrated that many who claimed adequate knowledge made dangerous errors.

Evaluators were lacking accurate information. Education is needed on the rates and nature of false allegations and alienation, the ways in which survivors are reluctant to co-parent out of fear of future harm, the mental health consequences of DV, and the importance of understanding coercive-controlling forms of violence.

Saunders’ found that court professionals need very specific knowledge that includes **screening for domestic violence, risk assessment, post-separation violence and the impact of domestic violence on children (ACE)**.

Saunders’ found that domestic violence advocates have more of the specific knowledge courts need to respond to domestic violence custody cases than the professionals courts rely on. The clear implication is that courts should use a multi-disciplinary approach. The study found that courts are not limiting abusers to supervised visitation as often as would benefit children and **shared parenting is harmful** in domestic violence cases. **Monitoring and accountability** are the **only** proven measures found to be effective.

### **Saunders/Meier**

**Gender bias is frequently uncovered in custody disputes** (Rosen & Etlin, 1996) not only are women disbelieved but evidence of abuse is ignored. Abused women are at higher risk of negative custody-visitation outcomes due to gender bias by courts, as documented by many

## Motion in Limine

by Stacy Kaiser

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

federal, state, and local commissions that have studied such bias since the 1980s (e.g., Abrams & Greaney, 1989; Czapanskiy, 1993; Danforth & Welling, 1996; Dragiewicz, 2010; Meier, 2003; Zorza, 1996). (5) Negative stereotypes about women seem to encourage judges to disbelieve women’s allegations about child abuse (Danforth & Welling, 1996; Zorza, 1996). Harsh outcomes include mothers being punished for reporting abuse, unfair financial settlements, and mothers being held to higher standards than fathers. In a study of appellate state court decisions, sole or joint custody was awarded to an alleged or adjudicated batterer in 36 of 38 cases, several of which involved severe battering and multiple convictions. However, two thirds of these cases were reversed on appeal (Meier, 2003).

Amongst evaluators for example, patriarchal norms correlated with a constellation of custody-beliefs: **DV is not important in custody decisions; fathers do not make false DV or child abuse allegations; and alleged female DV victims make false allegations, alienate the children, and hurt the children because they resist co-parenting.**

Importantly, patriarchal norms were related to the four outcome measures, specifically: (1) recommendation for sole or joint custody to the perpetrator, (2) recommendations for unsupervised visits, (3) overnight visits with the perpetrator would be in the child’s best interest, and (4) belief that mediation is beneficial for the couple in the vignette.

Studies actually show that rates of false allegations of child abuse are quite low in divorce cases. In the largest study evaluating rates of false allegations it was shown mother’s make false allegations less than 2% of the time and father’s 26%. (7) (Trocmé, McPhee, Tam, Hay)

Analysis of over 2000 court opinions confirms that courts are skeptical of mothers’ claims of abuse by fathers; this skepticism is greatest when mothers claim child abuse. The findings also confirm that fathers’ cross-claims of parental alienation increase (virtually doubling) courts’ rejection of mothers’ abuse claims, and mothers’ losses of custody to the father accused of abuse.

In comparing court responses when fathers accuse mothers of abuse, a significant gender difference is identified. Finally, the findings indicate that where Guardians Ad Litem or custody evaluators are appointed, unfavorable outcomes for mothers and gender differences are increased. (8).

The gender disparity and how much more powerfully alienation claims work for fathers as opposed to mothers also reinforces critics' claim, **that in abuse cases, alienation is operating in an illegitimate gender biased manner.**

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

Gender bias associated with evaluators lacking in DV training. The evaluators overly focus on the mother's role in the abuser's relationship with children. The evaluators neglect to hold the abuser accountable for the relationship.

### **ACE Study (Adverse Childhood Events)**

The CDC-Kaiser Permanente adverse childhood experiences (ACE) study is one of the largest investigations of childhood abuse and neglect and household challenges and later-life health and well-being.

The original ACE Research considered common adverse childhood experiences. These included three forms of child abuse, physical, sexual and emotional, two forms of neglect, physical and emotional and household problems that include separation of parents, domestic violence, mental illness, incarceration and substance abuse.

The exposure to ACEs were found to have a much farther reaching effect than expected. The children affected had learning and behavioral issues, reduced life expectancy, and a lifetime of health and social problems. It was found that children cannot be exposed to further abuse or else they cannot heal.

Another findings from the ACE Studies is that fear leading to stress rather than physical injuries cause most of the damage. The essence of domestic violence is that abusers use a variety of tactics to coerce, scare and intimidate the victim to do what the abuser wants. The fear that is engendered in both the mother and children causes a lifetime of health and other problems.

### **Brief history of PA**

Based on no research.



## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

In the 1980s, Richard Gardner, a psychiatrist concocted parental alienation syndrome. Gardner (known to be pro-pedophilia) premised that incest by fathers should be socially and culturally acceptable. Mothers becoming “hysterical” over sexual abuse should be corrected of their pathology and diagnosed them with parental alienation syndrome. The treatment for PA Gardner concluded is giving custody to the abusers.

This basis and foundation of this theory is purely legal. It was based on helping abusers in the legal arena.

### **Concerning data based on pro-pedophilia foundation**

No one in their right mind would believe such a clearly biased, non-researched, concept would gain so much legal traction. Well...

In the 2020 study, by Joan Meier (1), it shows outcomes in cases involving abuse allegations by mothers. It breaks the abuse claims down by type of abuse and if the father cross-claimed parental alienation. There were 38 cases alleging sexual abuse **with** the fathers counter claims of PA. The child’s claim of sexual abuse was believed only two times (only 2 out of 38) when the father defends with an alienation claim.

In general, it should be noted from the study, **cases with a cross alienation claim women lost their children half of the time regardless of abuse claims.**

### **Disastrous Paradox**

This failure to distinguish between whether harm to children – or their hostility to their father – is caused by alienation or abuse/neglect sets up a paradoxically disastrous dynamic: So long as an abuser can convince a court that the children’s attitudes can be labeled “alienation,” he can benefit from the very impact of his abuse.

Protective parents and domestic violence professionals have long asserted that courts dealing with child custody and their affiliated professionals frequently deny true claims of adult partner or child abuse and instead punish parents (usually mothers) who allege domestic violence, child physical or sexual abuse, or seek to limit the other parent’s child access for any reason.

## **Motion in Limine**

*by Stacy Kaiser*

**Description: To be used if there is a finding of domestic violence and the abused party is accused of “alienating” – please share with your attorney, information should be adaptable to any state.**

The Meier Study sought to develop empirical measures of (i) the rates at which courts credit (i.e. believe)\* different types of abuse and alienation allegations raised by either parent against the other; (ii) the rates at which parents win/lose the case, or lose custody when alleging any type of abuse against the other parent; (iii) the impact of alienation claims/defenses on (i) and (ii) above; and (iv) the impact of gender on (i), (ii), and (iii) above. That is, do the rates of crediting of abuse, wins, or custody losses vary for mothers and fathers when one accuses the other of abuse or alienation?

Even without the cross claim of PA, in general mother’s claims of abuse were believed **less than half of the time**. Consistent with the finding on courts’ skepticism toward mothers’ claim of abuse, the data show that for mothers reporting a father’s abuse, the mother lost custody in 26% of cases.

Even more dire when the fathers cross-claim alienation, courts are **4 (3.9) times more** likely to disbelieve mothers claim of child abuse than if the father made no alienation claim.

Not surprising but when the courts credited the alienation claim rates of maternal custody losses increased more drastically from 26% where there is no alienation claim, to 50% where alienation is claimed, and to 73% where alienation is **credited** by the court.

Remarkably, a fair number of mothers lost custody even when the court credited the father’ abuse. **Opinions of evaluators and Guardians Ad Litem (GALs) were a key factor in the court’s unprotective erroneous decision in 67% of cases (Silberg, 2013; Silberg & Dallam, 2013).**