5-6 b

3-3(b)

STATE OF CONNECTICUT

SUPERIOR COURT

Michael A. Albis
Chief Administrative Judge
Family Division

1 COURT STREET
MIDDLETOWN, CT 06457
PHONE: (860) 343-6570
FAX: (860) 343-6589

October 4, 2018

Hon. Andrew J. McDonald
Chair of the Rules Committee of the Superior Court
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: Maureen Martowska's request to revise Practice Book Section 25-60

Dear Justice McDonald:

It is my understanding that on September 17, 2018, the Rules Committee tabled the above matter in order to afford me the opportunity, as Chief Administrative Judge of the Family Division, to comment on the proposed revision. I thank the Rules Commlttee for the opportunity.

In particular, it is my understanding that you seek comment on the proposal to add language to Practice Book Section 25-60(b) regarding the denial or restriction of access to the report of an evaluation or study conducted by Family Services or a private evaluator. The proposed additional language would require a judge who orders the denial or restriction of access to the report (by a person otherwise entitled thereto under the rule) to provide "an articulated and reasonable basis for such denial or restriction."

As you know, when my predecessor, the Hon. Elizabeth A. Bozzuto, was previously asked to comment on the proposed revision, an appeal was pending in the Connecticut Appellate Court involving this issue. *Martowska* v. *White*, HHD-FA-05-4017673; AC 39970. As Judge Bozzuto suggested in her letter of February 5, 2018, the Rules Committee deferred consideration of the proposal pending the resolution of that appeal.

The appeal has now been decided with its dismissal by the Appellate Court for lack of subject matter jurisdiction on July 31, 2018. Due to the nature of the disposition, the decision in the appeal provides little substantive guidance on the question of the proposed revision. In dismissing the appeal, the Appellate Court noted that the case in which the evaluation had been filed had ended years before the request for the report was made and had no pending motions.

I understand and share the goal of having a clear standard for judicial decisions on questions of access to the reports covered by the rule. But I believe an appropriate standard already exists, namely the well-established "abuse of discretion" standard which has been applied to orders regarding the disclosure of such reports.[1] In my view, the proposed new language would unnecessarily change the existing standard of review and limit the discretion of the trial court in these sensitive matters.

I would be happy to respond further to any questions or concerns the Rules Committee may have regarding this proposal. Thank you again for the opportunity to provide input.

Respectfully yours,

Michael A. Albis
Chief Administrative Judge, Family Division

cc: Hon. Patrick L. Carroll III
Hon. Elizabeth Bozzuto
Attorney Joseph J. Del Ciampo

[1] See, e.g., *Martowska v. White*, 149 Conn. App. 314 (2014), an earlier appeal in the same case noted herein.

Additional Comments 3-3(c) (1)

Tracy, Patricia

From: Steven Miller <smillermd@aol.com>
Sent: Monday, November 19, 2018 9:41 AM
To: Del Ciampo, Joseph; Farley, Melissa
Subject: URGENT AND TIME-SENSITIVE - Re Agenda item #3-3 of today's Rules Committee Agenda relative to Practice Book Sec 25-60
Attachments: Miller, Steven - CV - 9-1-18.pdf; Miller Affidavit re Proposed Rule Change 11-19-18.pdf

Mr. Joseph Del Ciampo
Counsel to Rules Committee and Director of Legal Services, Connecticut Judicial Branch
Joseph.DelCiampo@jud.ct.gov

Ms. Melissa Farley
Executive Dir. of External Affairs Division of Connecticut Judicial Branch

Melissa.Farley@jud.ct.gov

Re: Rules Committee meeting today

Dear Mr. Del Ciampo and Ms. Farley:

Attached please fine an Affidavit that I wish to submit in regard to the proposed rule change. I have also attached my CV. I would be grateful if you would kindly make this available to the Rules Committee for today's meeting. I apologize for the lady minute submission but I only became aware of this matter yesterday.

Thank you very much. Please contact me personally if you have any questions or concerns.

Sincerely,

Steven Miller, M.D.
smillermd@aol.com
Cell: 781-718-5103.

Two Attachments

CURRICULUM VITAE

Steven G. Miller, M.D.

61 Kodiak Way #2511, Waltham, MA 02451
Main: 781-893-1800
Cell: 781-718-5103
e-mail: smillermd@aol.com

Degrees

A.B. (Psychology), Brown University, Providence, RI, 1972.

M.D., Brown University, Providence, RI, 1976.

Post-Graduate Training

Internship (Internal Medicine), Brown University Affiliated Hospitals, The Miriam Hospital, Providence, RI, 1976-1977.

Junior Medical Residency (Internal Medicine), Brown University Affiliated Hospitals, The Miriam Hospital, Providence, RI, 1977-1978.

Senior Medical Residency (Internal Medicine), Harvard University Affiliated Hospitals, Mount Auburn Hospital, Cambridge, MA, 1978-1979.

Certifications

Diplomate, National Board of Medical Examiners.

Diplomate, American Board of Internal Medicine.

Diplomate, American Board of Emergency Medicine.

Diplomate, American Board of Independent Medical Examiners (1996-2001).

Certified Medical Review Officer (1992-1998). (Certification to review and interpret the results of various types of drug testing for illicit or unauthorized drug use.)

Academic and Teaching Appointments

Clinical Instructor in Medicine, Harvard Medical School, 1982-2014.

National Faculty for Advanced Cardiac Life Support (ACLS), The American Heart Association, 1984-2004.

New England Regional Faculty for Advanced Cardiac Life Support (ACLS), Massachusetts Affiliate, The American Heart Association, 1998-2006.[1]

New England Regional Faculty for Pediatric Advanced Life Support (PALS), Massachusetts Affiliate, The American Heart Association, 1998-2006.[1]

State Faculty for Advanced Cardiac Life Support (ACLS), Massachusetts Affiliate, The American Heart Association, 1983-1998.

State Faculty for Pediatric Advanced Life Support (PALS), Massachusetts Affiliate, The American Heart Association, 1988-1998.

Clinical Fellow in Medicine, Harvard Medical School, 1978-1979.

Honors

Distinguished Service Award, American Heart Association, 2004.

Elected to Fellowship, American College of Physicians, 1998.

Elected to Fellowship, American College of Emergency Physicians, 1985.

Elected to Sigma Xi (a scientific research society), Brown University Chapter, 1975.

New York State Regents Scholarship Award, 1968.

Awarded black belt in Tae Kwon Do, 1973.

Current Professional Societies

Member, Massachusetts Medical Society (MMS).

Member, Association of Family and Conciliation Courts (AFCC).

Member, American Professional Society on the Abuse of Children (APSAC).

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[1] In 1998, the American Heart Association state affiliates, including Massachusetts, were combined into a New England Regional Affiliate; thus, state committees were combined and/or converted to regional committees.

Past Professional Societies

American College of Physicians (ACP) (Elected to Fellowship, i.e., FACP)

American College of Emergency Physicians (ACEP) (Elected to Fellowship, i.e., FACEP)

Major Affiliations

Private medical consulting practice specializing in *complex case resolution*. Areas of special expertise include internal medicine, behavioral medicine,[2] emergency medicine, occupational medicine, and forensic medicine. Among other things, served for many years as the primary medical consultant for more than 30 municipal police and fire departments for both medical and psychiatric issues. Directed both the Forensic Medicine and the Forensic Psychiatry/Psychology divisions. 1989-present.

Harvard Medical School. Clinical Instructor in Medicine. 1982-2014.

Cambridge Hospital, Cambridge, MA. Attending Staff, Department of Emergency Medicine and/or Department of Medicine, 1981-2006.

The Massachusetts Medical Education Group (MMEG). A consulting group specializing in research and education related to clinical education, clinical reasoning, clinical problem-solving and clinical decision-making; successor to the Boston Medical Education Group (see Boston Medical Education Group, below). Medical Director, 2013-present.[3]

The Boston Medical Education Group (BMEG). A consulting group specializing in research and education related to clinical reasoning, clinical problem-solving and clinical decision-making that has sponsored over 500 continuing medical education courses for physicians

[2] Behavioral medicine is an interdisciplinary medical specialty that focuses on the interface between physical medicine and psychiatry/psychology.

and other healthcare professionals on a wide variety of clinical topics.[3,4] Medical Director,

[3] Since 1979, I have given over 2000 medical lectures and directed over 500 continuing medical education courses for physicians and other healthcare providers, including numerous presentations and courses at national and international conferences in the U.S. and abroad. Although the subject matter varied (including topics in internal medicine, emergency medicine, behavioral medicine, occupational medicine, forensic medicine, psychology, psychiatry, pharmacology, toxicology, and others), the primary educational themes were almost always related to clinical and/or professional reasoning, problem-solving, and decision-making. My areas of special expertise – and frequent themes in my presentations – include decision-making under uncertainty, common cognitive biases, common clinical errors, conditional probability, and multivalent (fuzzy) logic. I have lectured on each of these topics to professional audiences at least 100 times. Other teaching experience includes supervision of medical students and residents as an attending physician at Cambridge Hospital from 1981 to 2005 (see Major Affiliations, above).

Recent international presentations include a keynote presentation at a symposium on parental alienation in California in 2014; co-directing a two-day colloquium in California in 2014 for invited experts on parental alienation (PA); presenting a workshop for the annual meeting of the Association of Family and Conciliation Courts (AFCC) on clinical reasoning and decision-making in New Orleans in 2015; presenting a workshop on dealing with forensic evidence for a conference on child abuse in Texas in 2015; co-presenting an intensive 5-days course for psychotherapists on the treatment of parental alienation for the Delaware Psychological Association, a branch of the American Psychological Association (APA), in 2017; presenting a workshop for the annual meeting of the AFCC entitled, "How to deal with clinical issues, clinical evidence, and clinical experts" in Boston in 2017; presenting a session for the Parental Alienation Study Group (PASG), an international organization, entitled, "Overview of Alienation Science: Where we've been; where we are; where we're going," in Washington, D.C. in 2017; co-presenting a workshop on parental alienation and how to distinguish it from estrangement at the annual meeting of the AFCC in Washington, D.C. in 2018; and a workshop on forensic medical and related issues for the American Professional Society on the Abuse of Children (APSAC) in New Orleans in June 2018. In addition, I have given at least five telephone presentations regarding child alignment and child maltreatment for Family Access, a large international support organization for families and professionals (both mental health and legal professionals) most recently a two-hour presentation on 8/5/18 for over 800 participants from 30 countries.

Other presentations in August 2018 include one at an international conference in Stockholm on how to distinguish alienation from estrangement; a full-day course in Stockholm on the treatment of alienation (as co-instructor); and presentations on successive days at an international conference in London related to alienation, one on diagnosis and one on treatment.

[4] Major, longstanding research interests include decision-making under uncertainty; the relationship between cognitive errors and clinical errors; development of decision tree

1981-2012.

Holy Family Hospital, Methuen, MA. Active Staff and Senior Medical Director, Department of Emergency Medicine, 1988-1996; Attending Staff in Occupational Medicine, 1996-2003.

Milton Hospital, Milton, MA. Chief, Department of Emergency Medicine, 1986-1991.

Sancta Maria Hospital, Cambridge, MA. Chief, Department of Emergency Medicine, 1984 (through Atlantic Medical Associates).

Major Committee Memberships and/or Activities

Immediate Past Chair and Vice Chair, Massachusetts/Rhode Island Committee on Emergency Cardiovascular Care (ECC), New England Affiliate, American Heart Association. 2004-2005.

Chairperson, Massachusetts/Rhode Island Committee on Emergency Cardiovascular Care (ECC), New England Affiliate, American Heart Association. 2001-2004.

Member, Operation Stroke Medical Committee, New England Affiliate, American Heart Association. 1999-2002.

Member, Operation Heartbeat Committee, New England Affiliate, American Heart Association. 1999-2002.

Member, Board of Directors, Boston Division, American Heart Association, New England Affiliate, American Heart Association. 1999-2002.

Chairperson, State Committee on Emergency Cardiac Care and Cardiopulmonary Resuscitation (ECC/CPR), Massachusetts Affiliate, The American Heart Association, 1984 - 1986 (member 1983-1988; 1993-1998).

Member, State Committee on Pediatric Advanced Life Support, c. 1988-1998, American Heart Association (now a subcommittee of the ECC/CPR Committee).

Medical Director, South Suburban EMS Consortium. A consortium which acts as the

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algorithms and decision rules for clinical problem-solving (I have been the primary author of several algorithms published by the AHA); practical applications of Bayes theorem (BT) to clinical practice (BT governs conditional probability; that is the probability of one thing given another thing); practical applications of multivalent logic ("fuzzy logic") to clinical practice; causation analysis; and risks/benefits analysis; and clinical reasoning and decision-making among mental health professionals. In regard to the latter, activities include research, writing, teaching and consulting.

regulatory body for pre-hospital care in a region south of Boston under the auspices of the Massachusetts Hospital Association, 1989-1990 (Member, 1986-1991).

Member, Regional Emergency Medical Services Advisory Council (REMSAC), Metropolitan Boston Hospital Association. 1986-1991.

Member, Program Council, Massachusetts Affiliate, American Heart Association, 1984-1986.

Member, Educational Subcommittee, Massachusetts Poison Control Center, 1987-1988.

Member, Executive Committee, Milton Hospital, Milton, MA. 1986-1991.

Chairman, Disaster Committee, Milton Hospital, 1986-1991.

Martial Arts Instructor (Tae Kwon Do), 1972-1979.

Publications

Miller, Steven G. (2019). Accurate Decision-Making in Medicine. Chapter in upcoming reference book scheduled for publication by Thomson Reuters in 2019.

Miller, Steven G. (2018). Why do specialists say that parental alienation is counterintuitive? Parental Alienation International (PAI). Two-part article, May and July 2018.

Baker, A. J. L., Miller, S. G., Bone, J. M. (and 9 contributors) (2016). How to Select an Expert in Parental Alienation. Presently issued as a "white paper" for educational purposes; anticipate eventual publication.

Miller, Steven G. (2013). Clinical Reasoning and Decision-Making in Cases of Child Alignment: Diagnostic and Therapeutic Issues. In Baker, A.J.L. and Sauber, S. R. (Editors). In *Working with Alienated Children and Families: A Clinical Guidebook.* Routledge.

Bernet, William et al. (2010). Parental Alienation: DSM-V and ICD-11. Charles C. Thomas. Springfield, IL. Contributor.

Bernet, William et al. (2010). Parental Alienation: DSM-V and ICD-11. *The American Journal of Family Therapy*, Volume 38, Issue 2 March 2010, pages 76-187. Contributor.

MacCuish, D and Miller, S. G. Mapping out a game plan for tachycardias. *Critical Care Choices 2002.* Lippencott Williams & Wilkins, May 2002.

Miller, S. Biphasic defibrillation: global guidelines for resuscitation standards. *Private Hospital Healthcare Europe (Clinical Supplement)*. Campden Publishing, London, 2002, pages C43-C45.

Cummins, RO and Hazinski, MF, Editors. *Advanced Cardiac Life Support: Principals and Practice/ACLS, The Reference Textbook*. The American Heart Association, 2002. Contributor (primary author of several chapters).

Cummins, RO and Hazinski, MF, Editors. *ACLS Provider Manual*. The American Heart Association, 2001. Contributor (primary author of several chapters).

Emergency Cardiac Care Committee and Subcommittees, American Heart Association. Guidelines 2000 for Cardiopulmonary Resuscitation and Emergency Cardiac Care. *Circulation*, 2000;102(suppl I). Contributor (co-author).

Caterine MR, Yoerger DM, Spencer KT, Miller SG and Kerber RE. Effect of Electrode Position and Gel-Application Technique on Predicted Transcardiac Current During Transthoracic Defibrillation. *Annals of Emergency Medicine*. Volume 29, Number 5; May 1997. Pages 588-595.

Billi, JE and Cummins, RO., Editors. *Instructors Manual for Advanced Cardiac Life Support*. The American Heart Association, 1994. Contributor (co-author).

Cummins, RO, et al., Editor. *Textbook of Advanced Cardiac Life Support*. The American Heart Association, 1994. Contributor (primary author of several chapters).

Emergency Cardiac Care Committee and Subcommittees, American Heart Association. Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care: III. Advanced Cardiac Life Support. *JAMA*. 1994;268:2199-2241. Contributor (co-author).

Licensure

Massachusetts, 1979 (#44406).
New Hampshire, 1995 (#9426-inactive).
Rhode Island, 1977 (#5230-inactive).

9/1/18

AFFIDAVIT OF STEVEN G. MILLER, M.D.

I, Steven G. Miller, M.D., do hereby depose and swear to the following based on personal knowledge and experience. If called and sworn as a witness, I could and would testify to the following.

1. I am submitting this Affidavit to comment on item #3-3 of the Nov. 19, 2018 Rules Committee Agenda relative to Practice Book Section 25-60 (previously agenda item #2-6 on the Rules Committee Agenda of Oct. 15, 2018).

2. I understand that the Rules Committee is considering a proposal to change a rule in the Practice Book such that certain types of reports and documents (including but not limited to custody evaluation reports, parenting plan recommendations, forensic psychology reports, forensic psychiatry reports, and other reports from mental health clinicians) would automatically be admitted into evidence without an evidentiary hearing. That is, I understand that such reports would be automatically admitted as trustworthy documents if the evaluations upon which they were based were done in response to a court-ordered evaluation, assessment, treatment, or intervention. Since the proposed rule change is a matter of record, I will not further describe it here; I have provided the above summary only for reference.

3. In my respectful opinion, for reasons I will discuss in subsequent paragraphs, the proposed rule change is a terrible idea that is likely to cause substantial harm to the public. Therefore, I strongly oppose it and hope the Committee will make no such change.

4. I am a licensed physician in the Commonwealth of Massachusetts and have been licensed there since 1978. My address is 61 Kodiak Way #2511, Waltham, MA 02451.

5. Among other things, I am an expert in Behavioral Medicine, a medical specialty

that focuses on the interface between psychology and psychiatry on one hand, and physical medicine on the other. I hold degrees in both Psychology and Medicine from Brown University.

6. I am also a specialist in severe child alignment and have dealt with more than a hundred cases of strong or pathological child alignment. I have published on that topic in the clinical literature (for example, a book chapter entitled Clinical Reasoning and Decision-Making in Cases of Child Alignment: Diagnostic and Therapeutic Issues that appeared in *Working With Alienated Children and Families: A Clinical Guidebook* edited by Dr. Amy J. L. Baker and Dr. S. Richard Sauber, Routledge, 2013). Written primarily for mental health professionals such as psychologists, psychiatrists, and psychotherapists, the main point of that chapter is that cases of child alignment are highly counterintuitive and that such cases can be summarized in the following excerpt (page 11):

> [Such cases] often exceed the expertise of highly skilled practitioners unless their special expertise includes treatment of severe child alignment, treatment of severe mental illness, and treatment of severe personality disorders . . . Clinicians who attempt to manage them without adequate skills are likely to find themselves presiding over a cascade of clinical and psychosocial disasters.

I am also an expert on related clinical problems including but not limited to parental alienation, parental estrangement, pathological enmeshment, and child maltreatment (a term that encompasses both abuse and neglect), including psychological, emotional, physical, and sexual abuse.

7. A copy of my curriculum vita is attached.

8. With respect to the counterintuitive issues, perhaps the single worst mistake a professional can make in a case of severe child alignment is to use what is commonly called the "High Conflict Model" (HCM). This applies to both mental health and legal professionals. Almost by definition, the HCM holds that both parties are substantially responsible for any disruption, discord, or dysfunction in the family. Advocates of this model tend to say that "both parties participated" and/or "both parties contributed" to the family dynamics. Moreover,

professionals who subscribe to this approach tend to assume that each party's contribution was clinically-significant and causally-connected to any negative behavior by the child or children. They tend to assert that if only the parents would put the children's needs ahead of their own, everything would be fine. The problem with this approach—and it is a very major problem—is that in many cases one of the parents has a major psychiatric disorder and lacks the capacity to put the child's needs ahead of her own. Thus, in a case of pathological alignment, use of the HCM is a recipe for disaster and yet – tragically – its use runs rampant throughout the court system. The proposed rule change would, in effect, leave the use of the HCM unchecked and would remove accountability with respect to the mental health and legal professionals who use it—whether appropriately or inappropriately.

9. More specifically, my strong composition to the proposed rule change is based on the following considerations, among others.

10. It is well-documented in the scientific literature that many mental health professionals, including clinical psychologists, provide neither evidence-based evaluations nor evidence-based treatment. That is so well-validated that it should not be considered controversial or debatable by the Rules Committee. To briefly highlight only a few citations on point: (A) In 2009, Sharon Begley, then a science writer for Newsweek, reported on a study done by Timothy Baker, et al. that investigated the quality of services provided by mental health professionals. Here is an excerpt from her column:

> When confronted with evidence that treatments they offer are not supported by science, clinicians argue that they know better than some study what works … Baker's team suggests a new accreditation system to 'stigmatize ascientific training programs and practitioners' … That may produce a new generation of therapists who apply science, but it won't do a thing about those now in practice.

(B) The study by Baker et al. (2009), entitled "Current status and future prospects of clinical psychology: Toward a scientifically principled approach to mental and behavior health care," published in *Psychological Science in the Public Interest*, contained the following conclusions (emphasis added):

> Clinical psychologists' failure to achieve a more significant impact on clinical and public health may be traced to their deep ambivalence about the role of science and their lack of adequate science training ... Clinical psychology resembles medicine at a point in its history when practitioners were operating in a largely prescientific manner.

(C) The study in question was accompanied by an editorial by Dr. Walter Mischel, a Professor of Psychology at Columbia University and one of the most well-respected and influential living psychologists. He was quoted in the Newsweek article as saying this:

> The disconnect between what clinicians do and what science has discovered is an unconscionable embarrassment . . . [there is a] widening gulf between clinical practice and science . . . It's very threatening to think our profession is a charade.

(D) Similar findings have been reported repeatedly by those (including me) who study clinical reasoning and decision-making among mental health professionals. To provide but one additional example, Dr. Scott O. Lillienfeld as written extensively on this topic. One of his works is a textbook entitled "Science and pseudoscience in clinical psychology," Edited by Lilienfeld, Lynn, and Lohr, Second Edition, Gilford Press, 2014. The title alone provides a good introduction to the topic.

11. The above criticisms of clinical psychology are nothing less than scathing. Furthermore, they are consistent with my personal experience as an expert in forensic medicine. In my experience, many forensic reports in the U.S. do not provide proper evidence-based, scientific opinions, and Connecticut is no exception. Indeed, in my opinion, Connecticut provides a prime example of the problem. On multiple occasions, I have seen or reviewed forensic reports in Connecticut that are of poor scientific quality and that lack validity or

reliability. In some cases, they are dangerously incorrect. I am not saying that is true in a majority of cases, but it is not uncommon (and, if asked to testify, I could provide examples).

12. To put a finer point on this, many such reports do not properly distinguish between the science and the author's belief system. Commonly, I have found ideology and/or speculation masquerading as science.

13. In cases that employ psychological testing, the tests and their results are often misused, misinterpreted, and misrepresented. This typically leads to catastrophically wrong conclusions by clinicians, attorneys, and courts.

14. Although I am not an attorney, as an expert in forensic medicine I wish to offer the following five (5) medicolegal points. In my respectful opinion:

- The proposed rule change would remove essential checks and balances within the system.
- It would deprive many people of due process.
- Worse, it would deprive many people of the opportunity to correct scientific inaccuracies and are horrible injustices that are present in many—not just a few—forensic reports.
- Consequently, it would have a terrible effect with respect to child protection.
- It would undoubtedly have other unforeseen consequences.
- Rather than improving the present problematic situation, it would make it that situation catastrophically worse.

Thus, the proposed rule changes raises important public policy issues.

15. In conclusion, although the proposed rule change was no doubt well-intentioned, it is, in my opinion, a very bad idea which I hope the Rules Committee will reject.

Thank you very much for your kind consideration.

Signed under the pains and penalties of perjury in Middlesex County, Massachusetts, this 19th day of November, 2018.

Steven G. Miller, MD

Steven G. Miller, M.D.

additional 3-3 (c) (2)
Comments Rec'd 11/19/18

Tracy, Patricia

From:	Maureen Martowska <maureen.martowska@gmail.com>
Sent:	Monday, November 19, 2018 4:09 AM
To:	Del Ciampo, Joseph; Farley, Melissa
Subject:	IMMEDIATE ATTENTION REQ'D - Rules Committee Hearing - Nov. 19, 2018 - agenda item 3-3
Attachments:	Ltr #3 to Rules Committee_Evaluations_11.19.18.pdf; Ltr #3_Rules Committee_Linda Gottlieb Amicus.pdf

Mr. Del Ciampo and Ms. Farley,

On Friday, Nov. 16, Judge Albis' comments were forwarded to me. I would appreciate you ensuring that the entire Rules Committee is timely made aware of and is in possession of my letter and enclosure (both attached herein) whereas they are holding a hearing this morning, Nov. 19th.

Unfortunately, I am unable to attend, but hope that the information I am supplying will provide useful for their further consideration regarding agenda item 3-3 for their Nov. 19th hearing.

Thank you,
Maureen Martowska, J.D.

On Fri, Nov 9, 2018 at 10:50 AM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

You may obtain any materials for a particular agenda item by contacting the Judicial Branch External Affairs Division at (860) 757-2270. Let them know what agenda and item number you are interested in and they will email the materials to you. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Thursday, November 01, 2018 11:08 PM
To: Del Ciampo, Joseph
Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Hi Mr. Del Ciampo,

I understand that the Rules Committee met on Oct. 15th and took up my item (#2-6 on the agenda) and that Judge Albis supplied his comments to the Committee. Could you advise where or how I may obtain a copy of Judge Albis' comments and advise as to what the final outcome was relative to this item.

Could you also advise as to whether the Committee received any other correspondence/submittals relative to item #2-6 and, if so, advise how I may obtain a copy of these.

Thank you,

Maureen Martowska

On Wed, Oct 10, 2018 at 6:35 PM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

I have received your submissions and will forward them to the Rules Committee. The next meeting of the Committee is Monday, October 15, 2015 at 2p.m. Judge Albis is not on the Committee but I will forward the materials to him as you have requested. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail. Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Wednesday, October 10, 2018 11:08 AM
To: Del Ciampo, Joseph
Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Hi Joseph,

I called this morning but you were busy. I left a voicemail this morning to see if I could get a confirmation that my submittals below to the Rules Committee have been forwarded onto them.

Could you just confirm when you get a moment.

Thanks,

Maureen Martowska

On Tue, Oct 9, 2018 at 11:51 PM Maureen Martowska <maureen.martowska@gmail.com> wrote:

Hi Mr. Del Ciampo,

Can you confirm that my submittals below have been given to the Rules Committee, in particular Judge Albis.

Please advise.

Thank you,

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>
Date: Mon, Oct 8, 2018 at 3:57 PM

Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>

Hi Mr. Del Ciampo,

I have attached my letter of Oct. 8, 2018 as well as my previous letter of May 11, 2017 regarding proposed changes to certain sections of P.B. 25-60, ref. item 1-8 of the Rules Committee's September 2018 agenda.

Please forward these items to Judge Albis and the entire Rules Committee for their thoughtful consideration at the upcoming October 2018 Rules Committee meeting.

Thank you for your assistance.

Maureen Martowska

On Tue, Sep 18, 2018 at 3:57 PM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

As regards Item 1-8 on the Rules Committee Agenda for September 17, 2018, the Committee tabled the matter to the next meeting in order to obtain comments from Judge Albis, Chief Administrative Judge, Family Division. Justice McDonald recused himself from the decision to table the matter.

As regards Item 1-7, please see attached. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Tuesday, September 18, 2018 11:46 AM
To: Del Ciampo, Joseph
Subject: Fwd: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Mr. DelCiampo,

Could you also be so kind as to provide me with the email sent by Judge Adelman referenced in item 1-7 of the Rules Committee Agenda for Sept. 17, 2018, or direct me to where it is posted for public review.

Thanks,

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>
Date: Tue, Sep 18, 2018 at 11:12 AM
Subject: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
To: <Joseph.DelCiampo@jud.ct.gov>

Hi Mr. DelCiampo,

I noted that the Rules Committee took up agenda item 1-8 yesterday. Whereas the minutes have not been posted yet, can you please advise as to the outcome of that particular agenda item.

> **Item 1-8** - Proposal by Ms. Maureen M. Martowska to amend Sections 25-60 of the Practice Book. On 2-26-18, at the request of Judge Bozzuto, Chief Administrative Judge, Family Matters, the Rules Committee tabled the matter until Martowska v. White, AC 39970, was decided. (On 7-31-18, the Appellate Court dismissed that case for lack of jurisdiction over the Appeal.)

Thanks for your cooperation.

Maureen Martowska

Maureen M. Martowska
2 Edgewater Dr.
Lakeville, MA 02347

November 19, 2018

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
P.O. Box 150474
Hartford, CT 06115-0474

Dear Rules Committee members,

I recently received a copy of Judge Albis' Oct. 4, 2018 response relative to my proposed changes to Practice Book § 25-60 relative to item #3-3 of the Nov. 19, 2018 Rules Committee Agenda (previously identified as agenda item # 2-6 of the Oct. 15, 2018 Rules Committee Agenda). As you are aware, I have sent two letters to this Rules Committee to date: 1) the first letter dated May 11, 2017, and 2) the second letter dated Oct. 8, 2018. I note that item #6 of the Minutes of the Rules Committee regarding the Oct. 15, 2018 meeting indicated that Judge Albis was to be afforded an opportunity to comment on my proposed comments, yet Judge Albis' response letter of Oct. 4, 2018 predates my Oct. 8, 2018 letter. So it is uncertain as to whether Judge Albis truly had the opportunity to review the matter in light of my then current remarks.

I am disappointed by the lack of timeliness with which my proposed changes have been addressed. It appears there was an effort to table the matter several times in the hope of getting some guidance from an appellate decision (*Martowska v White, HHD-FA-05-4017673; AC39970*) relative to the topic of psych evaluations and their release. Unfortunately, the appellate court dismissed that matter for lack of subject matter jurisdiction.

Independent of the outcome of the aforementioned case, it certainly falls within this committee's purview to assess and make decisions relative to rules of how psych evaluations are to be handled, included consideration of balancing the need to ensure judicial discretion while also ensuring that parties are not denied due process and that their constitutional rights are protected, ensuring all parties have equal access to the courts and court documents. Judge Albis noted in his response letter that he felt *"an appropriate standard already exists . . ."* in regard to access to reports covered by P.B. § 25-60, referencing the "abuse of discretion" standard.

My specific concerns regarding the "abuse of discretion" standard relative to psych evaluations are that such a standard is ripe for abuse where stigma is a pervasive issue presently impacting the very vulnerable population of litigants with either suspected or known mental health, intellectual, and/or cognitive disabilities. In pertinent part, when a party is denied access to a psych evaluation by a judge who fails to provide any reasonable articulated basis for such, then that party (who is already finding the court system extremely challenging) is further put at a disadvantage in that he/she will be unable to bring an appeal because appeals require "perfecting the record." It is my understanding that in the majority of cases, Motions for Articulation are often unsuccessful. Accordingly, the litigant is left unable to appeal and is denied due process in that without access to his/her psych evaluation , the denied party is unable to even determine how best to prepare and move his/her case forward.

My son's case highlights the disparity in treatment of those with mental health disabilities and those without. Despite the psych evaluator's instruction to release the psych evaluation to both parties and TWO court decisions (one from the family court and one from the appellate court) ordering the release

of the psych evaluation to my son, the family court refused to do so, noting an "informal notation" as the basis for such denial and also advising him at a status hearing that he was not a party to the case since he was pro se and not represented by counsel. Meanwhile, the court did allow him to "view" his psych evaluation at the courthouse, while transcripts of the status hearing will note that the court forbade him from taking verbatim notes or making a copy of his evaluation. These restrictions were ONLY placed on my son and not the opposing party who was represented by counsel and who could access a copy of the psych evaluation, unlike my son – a litigant previously granted ADA accommodations specifically for his significant cognitive and memory deficits. That was the unlevel playing field afforded my son.

Both substantive and procedural due process demand both parties should have equal access to court documents as well as an equal opportunity to prepare their case and mount a defense in their case. When a parent is denied access to a key psych evaluation that might deny him/her access to the care and custody of his/her child in whole or in part due to the party's inability to review the evaluation and challenge its completeness, veracity, process, expertise, etc., it deprives the parent of fundamental Fourteenth Amendment due process rights that should be subject to strict scrutiny.

Traditional notions of fair play suggest that all parties have a right to review the evidence either for or against them. It protects a vulnerable population of litigants, both those with perceived or real mental, intellectual, or cognitive disabilities from undeserved biases and discrimination precluding them from meaningful participation in preparation and defense of their own cases as a result of very real stigma.

Lastly, Judge Albis failed to address my comment relative to the automatic admissibility of psych evaluations . I still believe such a process violates the Rules of Evidence that were established for the purpose of ensuring the trustworthiness/reliability of evidence based on certain standards, including Daubert standards for threshold admissibility of scientific evidence (reference pg 2 of my May 11, 2017 letter). In *State v Porter*, 241 Conn. 57, 694 A.2d 1262 (1997), the CT supreme court decided the evidentiary standard to be implemented in CT stating:

> Only by being knowledgeable, in at least a basic way, about the issues surrounding the scientific evidence before them, can judges discharge their duties properly. Accordingly, Daubert, at its most fundamental level, merely directs "trial judges consciously [to] do what is in reality a basic task of a trial judge-ensure the reliability and relevance of evidence without causing confusion, prejudice or mistake." *Id.* at 758.

I have enclosed an amicus brief template dated April 28, 2017 by Linda Gottlieb, LMFT, LCSW-R. Linda Gottlieb is a member of the American Association for Marriage and Family Therapy and has previously submitted amicus briefs relative to the reliability of psych evaluations. This is submitted for your further consideration as to whether automatic admissibility of these evaluations is prudent. Ms. Gottlieb specifically notes that psych evaluations in cases of parental alienation are extremely inaccurate and unreliable as she points to factors on pgs 10-11 in her amicus brief.

Thank you for your further consideration,

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Member, Parent Empowering Parents (PEP) Advisory Board
Lurie Institute for Disability Policy
The Heller School for Social Policy and Management
Brandeis University, Waltham, MA

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Encl.

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Honorable_____
Courthouse
street
City, State

Dear Judge _____:

Attached you will find a twelve (12) page notarized copy of my ***Amicus Brief documenting the inaccuracies, misleading results, and limited relevancy of the standard psychological tests commonly given in evaluations for custody and parenting time arrangements. These tests are particularly misleading—and essentially erroneous—when the examinee being assessed is a targeted or alienated parent. The test results should therefore be given little or no weight in custody evaluations regarding the targeted or alienated parent.***

Should the court wish to contact me for clarification or confirmation, my office phone number is (631) 707-0174, and I would be more than happy to opine telephonically or via other electronic communication, under Oath, about any and all questions Your Honor would inquire of me.

I make an explicit point that I have not evaluated the parents/guardians or the child in the matter before your Court for the purpose of this Brief, nor do I favor one party over another. I offer my professional opinions given my history of four decades of professional work experience and evaluations in the area of high conflict divorce. I trust my statements will carry weight in Your Honorable Court in consideration that psychological tests are an inaccurate and misleading measure of the competency of a parent and of that parent's parenting abilities. I declare that I was neither compensated nor otherwise received any financial compensation or other benefits for writing this Brief.

Respectfully signed on letterhead, notarized and submitted for the case of *Plaintiff v Defendant*

Linda J. Gottlieb, LMFT, LCSW-R
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BEFORE ME, the undersigned Notary Public, on this day personally appeared LINDA J. GOTTLIEB, who being by me duly sworn, on her oath deposed and said that she is an amicus curiae in the above entitled and numbered cause; that she has read the above and foregoing amicus brief, and that every statement contained therein in within her personal knowledge and is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the _____ day of _____, 2017 by Linda J. Gottlieb LMFT, LCSW-R.

_____
NOTARY PUBLIC, STATE OF NEW YORK

Case No

Courthouse

Plaintiff v Defendant

AMICUS BRIEF DOCUMENTING THE LIMITED RELEVANCY OF PSYCHOLOGICAL TESTS IN EVALUATIONS FOR CUSTODY AND PARENTING PLANS

Honorable____
Courthouse
Street
City, State

Report of Linda J. Gottlieb, LMFT, LCSW-R

Dear Judge____:

My name is Linda J. Gottlieb, LMFT, LCSW-R, and I am writing this Amicus Brief for the purpose of educating the Court about the numerous inaccuracies, biases, and limited relevancy of the psychological tests that are typically given in evaluations for custody and parenting plans. The misuse of these tests is exacerbated in alienation cases because of two critical factors: 1) these cases are highly counterintuitive and 2) these cases are highly complex and require a level of specialty that the typical forensic evaluator lacks.

Of particular note, psychological testing in custody evaluations is generally optional—that is, not required by guidelines or standards, such as those promulgated by the Association of Family and Conciliatory Courts, the American Academy of Matrimonial Attorneys, the American Psychological Association, the National Association of Social Workers, or by most state governing agencies. Indeed, I have found in my practice, having completed several thousand custody evaluations, that observation of the parents in interaction with each other and in interaction with their children, is much more informative of a parent's parenting abilities, readiness to work cooperatively with the

other parent in co-parenting, and willingness and ability to support the other parent's relationship with their child. Information derived from such observations is much more relevant to this matter before the Court regarding custody and visitation matters.[1]

Regarding the tests, themselves, I beseech the Court to take heed of the comments by Joel Klass, M.D. and Dr. Joanna Peros, PSYD, RN, in their article, "Ten Signs of Questionable Practices in Custody Evaluations," published in The *American Journal of Family Law,* (2011). Vol. 25 *(3),* (PP.81-86,) in which they assert the following, "Most psychological tests are not normed on parents undergoing the stress of custody evaluations." (P. 82.)

These mental health professionals provided support for this finding by affirming that:

> "There is no proven advantage for doing Rorschach tests, IQ tests for normally functioning adults, Draw a Person tests, House–Tree–Person testing, Kinetic Family Drawing tests, unstandardized computerized tests or many other tests with unproven results....In addition, for an evaluator to suggest that only by doing extensive psychological testing can an issue be determined is to distort the really more important resources available to assess crucial areas." (P. 82.)

The above mental health professionals suggest alternatively a more informative assessment tool:

> "Far more important than the psychological test results are other real-life conditions under which the child thrives or fails." (P. 83.)

I agree with the above mental health practioners regarding their assertion that "the conditions under which a child thrives or fails" can be better evaluated—for purposes of custody recommendations—by observing the family dynamics; such dynamics to include, but are not limited to, the family system as a whole and of its various subsystems, such as the parents and children together, the children with each parent, the parental subsystem, the sibling subsystem, and the nuclear family members with extended family members.

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[1] While interviewing all parties in a custody evaluation is good clinical practice as well as a requirement in most states and by most guidelines or standards promulgated by professional organizations, interviewing the child and the favored parent is ***neither a necessity nor*** a standard of practice in order to arrive at a clinical finding to rule alienation in or out. Firstly, the standard to arrive at a clinical finding is that the case documentation be of sufficient quality evidence. Secondly, a custody evaluation and an evaluation for parental alienation are very different evaluations—not the least of which is that an alienation evaluation is simultaneously a child abuse investigation. The requirement here is to protect the child as soon as the finding for alienation is made—and you do not wait to interview the child or favored parent if the finding is reached without doing the interviews. While it is common that, when alienation is alleged, it is typically in a custody case, you cannot impose custody standards upon the evaluation for alienation. So to reiterate, the specialist in alienation can readily arrive at findings based exclusively on the case file—as long as it contains adequate quality information. This is particularly true when the record has documented numerous direct quotes from the parties. Direct quotes are almost likely being there for the reviewer.

Other significant factors to be evaluated are input from teachers, therapists, coaches, religious advisors, and other professionals who interact with the family as a whole and/or with its subgroups and with its individual members. Of particular importance, one of the more critical criterion as to whom is the better parent is the willingness and capability to facilitate and insist upon a meaningful and substantial relationship between the other parent and their child.

Particularly when the forensic evaluator is a non-specialist in alienation and therefore likely lacks sufficient pattern recognition for alienation,[2] observation of the interactions among and between family members in various subgroups will reduce the likelihood of missing the alienation—a very common clinical error occurring in alienation cases. Direct observation of the family members' interactions has the potential for providing the non-specialist with more accurate information that do psychological tests as to the family dynamics. Yet, such observations are rarely sufficiently undertaken in custody evaluations. The observational component of custody evaluations are usually minimal, not comprehensive, and not given the weight that is warranted.

The above authors whom I cited have further alerted judges and others who influence questions of custody and parenting time of the following:

> "Judges should know that psychological tests can carry a warning that they are not to be used without clinical correction or for forensic purposes to determine legal issues. Psychologists need to make these warnings known in every report where such tests are used. Without the court knowing the limitations and published precautions on using psychological tests in legal cases, too much reliance on the psychological tests can result in injustice for parents and children. When a patient in a hospital was talking to you while their EKG machine is showing a straight line, you throw out the machine and not wheel out the patient. So it is with psychological testing. Reality trumps all the psychological tests known....An overreliance on limited validity psychological test results can violate the basic legal right to have judgments based on actual behavior and not on thoughts, feelings, or psychological tendencies." (P. 83.)

Of particular note, these tests do not take into account the effects of the stress and the persecution that the targeted/alienated parent undergoes that results from a myriad of false and malicious child abuse and domestic violence allegations. Nor do these tests take into account the effects of the unjustified denial/suspension of visits with their children nor the maltreatment and rejection by their children and the other parent. And finally, these tests do not account for the stress resulting from the financial burdens—frequently

[2] I have written in other Amicus Briefs and in articles that cases of alienation are highly complex and counterintuitive. Compounding the problem for arriving at correct findings is that the typical forensic evaluator and mental health clinician lack adequate training and experience with this phenomenon and therefore either miss the alienation altogether or confuse it for estrangement. The resulting findings, therefore, are usually backwards and wrong.

resulting in bankruptcy—required for defending against the myriad of false, malicious abuse allegations as well as the cost for pursuing legal remedy for the violations of the targeted/alienated parent's parental rights.

In my professional practice, for example, I have frequently encountered the double-bind situation that the targeted/alienated parent confronts when undergoing the most commonly used psychological test known as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). One question on the test inquires as to whether the examinee believes that people are out to get her/him. Well, after having been falsely accused of child abuse and/or domestic violence allegations (frequently multiple times), being unjustifiably railroaded by the other parent out of her/his child's life, not receiving justice from the justice system due to multiple delays in addressing the violations of her/his parental rights, and frequently having to exhaust all resources due to legal fees, the targeted/alienated parent justifiably believes that many individuals are, indeed, "out to get" her/him. As the cliché goes, "Even paranoids have enemies." But when answering this question truthfully—that many individuals are, indeed, out to get her/him—it invariably results in being diagnosed as having a "paranoid personality disorder." Were the alienated parent to take the test PRIOR to the onset of the alienation, I am convinced that her/his answers would be very different: namely that there would be no response indicative of a diagnosis of paranoia.

My experience in reviewing the results of the MMPI-2 for numerous alienated parents is confirmed by Gerald H, Vandenberg, PhD, ABPP, in his article entitled, "Custody Evaluation: The Expert Witness and the Assessment Process," published in *The American Journal of Family Law* (2002). Vol. 16, (4). PP. 253-259):

Dr. Vandenberg concludes that custody evaluations are often inaccurate and exaggerate results. He states:

> "The data *[from the MMPI test]* must be interpreted and cross-checked using multiple sources of information and *considering the overall context*. [Italics mine.] For example, a "paranoid" scale on a given test may have multiple meanings both in relation to other information and in relation to context." (P. 257.)

I maintain that it is the traumatic situation of being a victim of alienation that is the cause of the targeted/alienated parent's questionable test results. The context of the alienation dynamic must be evaluated for its effects on the examinee and how it contaminates the testing results for an otherwise high functioning parent. But assessing for the targeted/alienated parent's situation is rarely done. Failing to account for the alienated parent's traumatic situation and its impact on test results as well as the person's current functioning is known as the Fundamental Attribution Error (FAE)—as documented by Steven Miller, MD, in his chapter entitled, "Clinical Reasoning and Decision Making in Cases of Child Alignment," in the 2013 book entitled, *Working with Alienated Children and their Families,* edited by Baker and Sauber.

The targeted/alienated parent frequently presents as a trauma victim and may exhibit manifestations indicative of the trauma. That is, should the alienated parent manifest symptoms, they are situationally caused and maintained and are not dispositional or internal to the person. Dr. Miller refers to the targeted/alienated parent as presenting with the 4 A's: angry, agitated, anxious and afraid. Of course, this is so typical of a trauma victim! In contrast, the alienating parent is in a peachy situation: control and allegiance of the children, often having co-opted the professionals, and setting the Court's agenda. The alienating parent, according to Dr. Miller, presents with the 4 C's: cool, calm, convincing, and conniving.

In my practice with more than 300 alienated parents, once there is an end to the alienation, symptoms typically disappear—and disappear rapidly. That has been my experience with every alienated parent who was reunited with his/her children. These parents are as competent, nurturing, supportive, and protective of their children as they had been before the onslaught of the oppressive, humiliating, deprecating, rejecting, and bankrupting results of the alienation.

Although recognizing that the commonly used instruments in custody evaluations can offer insight into some parenting issues, Dr. Vandenberg emphasizes the limitations of the MMPI, the Millon Clinical MultiAxel Inventories, or the Rorschach that, "do not address the issue of child contact or parenting directly." (P.257.)

Dr. Vandenberg instead suggests other instruments because "other instruments assess parenting practices, parenting satisfaction, rapport, collaborative ability with the other parent, etc. and as such are more directly relevant to parenting itself." Such other tests are The Parent Child Relationship Inventory, The Parenting Satisfaction Inventory, and The Parenting Skills Inventory, as recommended by Dr. Vandenberg. (P. 257.)

Nevertheless, I have rarely experienced that these latter instruments are employed in custody evaluations.

Worth noting, in his article entitled, "Child Custody Evaluation Practices: More Experienced versus Less Experienced Examiners," published in *The American Journal of Family Law*, (1977), Vol. 11 *(3)*, (PP. 173-177) Marc J. Ackerman, PhD., documented that his research concluded that "More experienced examiners observed for a significantly longer period of time, while those less experienced spent significantly more time performing psychological tests." (P. 174)

And finally, Dr. Vandenberg offers a cautionary note, "In the context of a custody battle it is in the *interpretation* of the evaluator that the skill and expertise of the evaluator comes into play." (P. 258.)

I cannot concur more with Dr. Vandenberg. It behooves the Court to determine if the evaluator has acquired sufficient, specialized knowledge, training, and experience in family dynamics in general and in alienation specifically. Becoming a specialist in

alienation requires many years of study beyond the coursework for most mental health degrees, regular collaboration with other alienation experts, and remaining current with the developing clinical literature about alienation. Should the court still wish to give weight to the psychological test's findings, the test administer should be required to provide the raw test scores, be asked to defend how he/she had arrived at the interpretations, reveal whether he/she or a computer had interpreted the raw scores[3], provide the reasoning behind the selection of what scales and what questions had been selected for interpretation, and finally, provide what limitations he/she feels apply to the test.

Indeed, Dr. Klass and Dr. Peros acknowledge the preference for a social worker to be the forensic evaluator for custody evaluations in recognition of that discipline's superior expertise in understanding family dynamics. They stated it as follows:

> "Psychiatrist and psychologist evaluators too often ignore the expertise of social workers. Social workers traditionally have more experience in doing home studies, and charge less than psychiatrists and psychologists for doing so. Often, a court-appointed psychologist or Guardian takes the liberty of doing home studies disregarding their lack of expertise in the field. Their reports neglect all the subtleties detected by a capable social worker who has an eye for important details....psychologist evaluators can improperly charge psychologist fees for doing home studies that should be done by a social worker, at much less cost." (PP. 83-84.)

And of course, the professional education, training, and experience of the Marriage and Family Therapist provide the greatest expertise in assessing family dynamics and thus the matters before this Court. To use a relevant metaphor, a specialty in family dynamics—and in alienation in particular—is as different from every other clinical model as matrimonial law is from tax law, from international law, from corporate law, etc.

Inaccurate interpretation of psychological test interpretation is exacerbated because alienation cases are highly counterintuitive, and the non-specialist in alienation often falls prey to these counteractive issues. By counterintuitive, I mean the brain is hardwired to make very common thinking errors; that is, the mind is tricked into getting things backwards and wrong—just as it does in optical illusions.

The following are a few of the many counterintuitive errors occurring in alienation cases:

1) If a child rejects a parent, it is presumed that the parent must have done something to warrant it. We simply tend not to think of another

[3] What the examiner often fails to reveal—despite the test authors' admonition to do so—is how the raw scores were interpreted. Most times, a computer interprets the scores, and a computer, obviously, cannot factor in the examinee's situation—such as for alienation. Computer interpretation is therefore a huge factor resulting in misleading test results—especially for alienated parents.

explanation: namely that the child had been brainwashed. But if the alienated child were compared to foster children----children who had been removed from their parents due to actual abuse and neglect----a stark difference would be noted: namely that truly abused children crave a relationship with their parents of whom they are protective and not accusatory. Such assessments of foster children reveal just how anti-instinctual it is to reject a parent.

2) The child aligns with the abusive parent. While this behavior appears irrational, there is method to the child's madness: when abused by a parent, the child's self-esteem is attacked, resulting in the child feeling worthless, rejected, and unlovable. The child therefore engages in an undoing campaign through alignment with the abusive parent in hopes of acquiring the parent's love and approval. Additionally, the child is vulnerable to the manipulations of the alienating parent, such as bribery, abuse of authority and power, and permissiveness. We know how it is generally the targeted parent who imposes appropriate discipline to fill the parental vacuum left by the alienating parent. By doing so, targeted parents are incredibly misunderstood and doubly victimized by the professionals, who then label the alienated parent as being too harsh and not respectful of their children's feelings and wishes.

3) The pathological enmeshment between the alienating parent and child appears to be healthy bonding. It is not. Rather, it is severe boundary violation by the alienating parent against the child. As a result of this dysfunctional relationship—akin to symbioses—the alienated child loses her/his individuality; must suppress her/his natural feelings of love and need for a parent; and is manipulated to do the bidding of the alienating parent.

4) It is counterintuitive NOT to believe the brainwashed child, who sounds so credible in relating, with passion and conviction, "horrific" allegations of child abuse at the hands of the targeted parent. This counterintuitive issue is understood by the alienation specialist who recognizes that alienation is akin to a cult brainwashing in which the child expresses the beliefs, feelings, and wishes of the alienating parent.

Inaccuracies in the interpretation of psychological tests further result from evaluator bias, which is exacerbated by the previously discussed counterintuitive issues in alienation. By bias, I mean that the evaluator falls prey to numerous cognitive and clinical errors—errors that commonly occur in and must be controlled for when assessing any clinical situation. But such errors are rampart in alienation cases because these cases are so complex—involving severe child alignment, psychopathology, and personality disorders. I previously referenced the FAE, as one serious cognitive error commonly occurring in alienation cases. It is beyond the scope of the amicus brief to discuss these errors, but the

reader may become familiar with them by reading Dr. Miller's chapter, which I previously referenced.

According to Dr. Miller, clinicians who lack expertise in the specialty of alienation are in way over their heads, and, due to the complexity of these cases, are often practicing outside their area of expertise. Complicating this calamity even further, they are unaware of their lack of expertise, and this results in their certainty of their incorrect findings. Dr. Miller asserts:

> "Clinicians who attempt to manage them [*cases of alienation*] without adequate skills are likely to find themselves presiding over a cascade of clinical and psychological disasters." (p. 11)

In brief, I urge the Court to be judicious in assigning weight to psychological test results for the following reasons:

a) According to the various tests' authors, psychological tests are designed for hypothesis generation not for hypothesis confirmation. The common practice of forensic custody evaluators to use the tests for hypothesis confirmation is a misuse of the test—and generally leads to disastrously incorrect findings in alienation cases.

b) The tests' interpretation is subjective, and, due to the counterintuitiveness of alienation, many evaluators often develop biases leading to subjective misinterpretation. (For example, on the MMPI-2 test, there are more than 130 and almost 600 questions. It is, therefore, not practical to interpret the entire test. Which scales the evaluator emphasizes and which are de-emphasized is subjectively selected and often results in skewed results.

c) The MMPI-2 has not been validated for a person undergoing a high conflict custody case and one that involves alienation. The reference population of the MMPI 2 is a normative population based on the 1980 census—this population is therefore not matched to the severely alienated parent, which means that the test results are likely questionable. The usual test results indicating paranoia and narcissism for the targeted/alienated parent, in actuality, reveals exactly what one would expect from a person undergoing a severe case of alienation – particularly when their concerns have been trivialized, dismissed, and criticized by numerous mental health and legal professionals who are frequently co-opted by the alienating parent. Targeted/alienated parents are a trauma victim, and trauma victims are not a matched population to this reference population.

d) The interpretation of the raw data cannot be done in isolation from the person's situation. The clinical context of someone undergoing severe

alienation is significantly different from the context of a general population. So, for example, if a person took the test the day after she/he had been falsely accused of sexually abusing her/his daughter; after someone had been evicted from the home due to false child abuse or Domestic Violence allegations; had been evicted with little more than the clothes on her/his back; had been apprised by her/his attorney that he/she could be sent to prison for a long time; or merely had been cursed out by her/his beloved children, I would not call any one of these situations optimal test conditions. A person taking the test under such conditions will likely appear to be paranoid after going through this. The targeted/alienated parent does not exist in a normative situation.

e) The clinical context must be considered as a factor in assessing the raw data (the person's answers.) Often the context is not considered—particularly if typically interpreted primarily by a computer and not the evaluator, which is often the case. It is therefore imperative to determine how the raw data was interpreted because a computer cannot assess for the context of the test taker's clinical situation.

f) Due to biases, the custody evaluator may have subjectively and partially chosen to emphasize some clinical scales of the MMPI and de-emphasize or ignore others in order to portray the targeted parent/alienated parent in the worst light and the alienating parent in the best light. Unfortunately, I have witnessed this in several cases I have testified on.

g) We should not be surprised that the targeted/alienated parent frequently tests positive for paranoia. After all, the children, the other parent, and often the professionals in the mental health and judicial systems are talking negatively about that parent, filing false allegations of child abuse and domestic violence, etc. Even paranoids have enemies.

h) The test answers that a targeted/alienated parent would have given prior to the onset of the alienation would likely be very different than the answers given subsequent to the onset of the alienation.

I conclude this Amicus Brief by maintaining that a more relevant criterion than the questionable test results for determining who is the better parent, is the parent who is more likely to facilitate the relationship between the other parent and their children. This is usually a criterion that can be found in most state laws, statutes, and/or case law. It should be adhered to. Assessing the parent in important settings and relationships will provide much more accurate findings than the psychological tests. If the evaluator does not have sufficient pattern recognition for alienation—based upon extensive experience with this clinical situation—then observations of the family members interactions with each other should be relied upon rather than on the above referenced test results. Such observations are more likely to better assess the parenting abilities and emotional

functioning of the parents.

I am enclosing with this Amicus Brief my Professional Resume/Curriculum Vitae (CV). Please feel free to contact me with any questions.

Respectfully signed, notarized and submitted for the case of *Plaintiff v Defendant*

Linda Gottlieb, LMFT, LCSW-R
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BEFORE ME, the undersigned Notary Public, on this day personally appeared LINDA J. GOTTLIEB, who being by me duly sworn, on her oath deposed and said that she is an amicus curiae in the above entitled and numbered cause; that she has read the above and foregoing amicus brief, and that every statement contained therein in within her personal knowledge and is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the _____ day of _____, 2017 by Linda J. Gottlieb LMFT, LCSW-R.

_____
NOTARY PUBLIC, STATE OF NEW YORK

Additional comments 3-3(c) (3)

Tracy, Patricia

From:	Hector M <hecbridge1@yahoo.com>
Sent:	Monday, November 19, 2018 7:13 AM
To:	Del Ciampo, Joseph; Libbin, Martin; Farley, Melissa; Goldstein, Damon
Cc:	Maureen Martowska
Subject:	Fw: Fwd: IMMEDIATE ATTENTION REQ'D - Rules Committee Hearing - Nov. 19, 2018 - agenda item 3-3
Attachments:	Ltr #3 to Rules Committee_Linda Committee_Evaluations_11.19.18.pdf; Ltr #3_Rules Gottlieb Amicus.pdf

Dear Atty. Del Ciampo, et al,

Sorry to bother you but Ms. Martowska has asked me to weigh in on the attached letter written by Judge Albis. He wrote the letter in response to some comments she made on revisions to practice book section PB 25-60.

After reviewing Judge Albis' letter, it appears that there is some form of misunderstanding here.

Ms. Martowska, in no way, shape or form is attacking a judges discretion to determine the admissibility of evidence. She merely is questioning the legality of the language of the practice book section as currently written.

The language seems to imply that the only criteria for determining the admissibility of the report is the presence of the author. This appears to violate numerous rules of evidence. I am not going to go through them here as Ms. Martowska has outlined some of them in her testimony. In addition, as my clients have high expectations that I understand the rules of engineering I employ, I have a right to expect the judges of your court to fully understand the rules of evidence.

I have a dear friend from high school with whom I still keep in touch. He actually introduced me to Steve Obsitnik two years ago as they both graduated from the Naval Academy and were in the first Persian Gulf war together. His wife is a former district attorney from Brooklyn, New York. A District attorney for the city of New York is somewhat equivalent to a state attorney in Connecticut on the city level. She invited me 25 years ago to participate in some mock training trials on a Saturday at the Manhattan criminal Court on Center Street. I was a juror during those mock trails. I watched in amazement as it took her over an hour just to get a gun admitted as evidence.

That's all Ms. Martowska is asking for, that a party's right to question the admissibility of evidence not be denied. As written the practice book section appears to deny a party that right.

As a compromise, I offer the following. Can a sentence be added that states, "A party may request a hearing on the admissibility of any report."

It's a win-win compromise. The party's due process rights are not violated as they're allowed to question the admissibility of the report and a win for the judge as they still get to determine the admissibility of that evidence based on their discretion.

Two weeks ago, while I was at work, I received a call from a very upset parent who complained to me that a judge did not allow them to finish their testimony. I asked the party if the judge stated a reason such as hearsay, relevancy, repetition, etc. The party claims that the judge did not cite any of these reasons. If that is true, then the judge violated a Connecticut supreme court ruling which clearly states that a judge can't stop a party from testifying.

Judges have enormous power to pick and choose which evidence they want to include in crafting their rulings but they have no right to deny us our right to be heard and that's all Ms. Martowska is asking for, an opportunity for parties to be heard on the admissibility of the report.

Thank you for taking the time to read my email and considering my comments.

Unfortunately, as it's already a short work week, I can not attend. But, if you have further questions, please do not hesitate to reach out

Hector Morera
917-821-6951

Sent from Yahoo Mail for iPhone

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Monday, November 19, 2018, 4:23 AM, Maureen Martowska <maureen.martowska@gmail.com> wrote:

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>

Date: Mon, Nov 19, 2018 at 4:09 AM
Subject: IMMEDIATE ATTENTION REQ'D - Rules Committee Hearing - Nov. 19, 2018 - agenda item 3-3
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>, <Melissa.Farley@jud.ct.gov>

Mr. Del Ciampo and Ms. Farley,

On Friday, Nov. 16, Judge Albis' comments were forwarded to me. I would appreciate you ensuring that the entire Rules Committee is timely made aware of and is in possession of my letter and enclosure (both attached herein) whereas they are holding a hearing this morning, Nov. 19th.

Unfortunately, I am unable to attend, but hope that the information I am supplying will provide useful for their further consideration regarding agenda item 3-3 for their Nov. 19th hearing.

Thank you,
Maureen Martowska, J.D.

On Fri, Nov 9, 2018 at 10:50 AM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

You may obtain any materials for a particular agenda item by contacting the Judicial Branch External Affairs Division at (860) 757-2270. Let them know what agenda and item number you are interested in and they will email the materials to you. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Thursday, November 01, 2018 11:08 PM
To: Del Ciampo, Joseph
Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Hi Mr. Del Ciampo,

I understand that the Rules Committee met on Oct. 15th and took up my item (#2-6 on the agenda) and that Judge Albis supplied his comments to the Committee. Could you advise where or how I may obtain a copy of Judge Albis' comments and advise as to what the final outcome was relative to this item.

Could you also advise as to whether the Committee received any other correspondence/submittals relative to item #2-6 and, if so, advise how I may obtain a copy of these.

Thank you,

Maureen Martowska

On Wed, Oct 10, 2018 at 6:35 PM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

I have received your submissions and will forward them to the Rules Committee. The next meeting of the Committee is Monday, October 15, 2015 at 2p.m. Judge Albis is not on the Committee but I will forward the materials to him as you have requested. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: *(860) 706-5120*

Fax: *(860) 566-3449*

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Wednesday, October 10, 2018 11:08 AM
To: Del Ciampo, Joseph
Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Hi Joseph,

I called this morning but you were busy. I left a voicemail this morning to see if I could get a confirmation that my submittals below to the Rules Committee have been forwarded onto them.

Could you just confirm when you get a moment.

Thanks,

Maureen Martowska

On Tue, Oct 9, 2018 at 11:51 PM Maureen Martowska <maureen.martowska@gmail.com> wrote:

Hi Mr. Del Ciampo,

Can you confirm that my submittals below have been given to the Rules Committee, in particular Judge Albis.

Please advise.

Thank you,

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>
Date: Mon, Oct 8, 2018 at 3:57 PM

Subject: Re: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>

Hi Mr. Del Ciampo,

I have attached my letter of Oct. 8, 2018 as well as my previous letter of May 11, 2017 regarding proposed changes to certain sections of P.B. 25-60, ref. item 1-8 of the Rules Committee's September 2018 agenda.

Please forward these items to Judge Albis and the entire Rules Committee for their thoughtful consideration at the upcoming October 2018 Rules Committee meeting.

Thank you for your assistance.

Maureen Martowska

On Tue, Sep 18, 2018 at 3:57 PM Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov> wrote:

Dear Ms. Martowska,

As regards Item 1-8 on the Rules Committee Agenda for September 17, 2018, the Committee tabled the matter to the next meeting in order to obtain comments from Judge Albis, Chief Administrative Judge, Family Division. Justice McDonald recused himself from the decision to table the matter.

As regards Item 1-7, please see attached. Thank you.

Joseph J. Del Ciampo

Director of Legal Services

Connecticut Judicial Branch

100 Washington Street, 3rd Floor

Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120

Fax: (860) 566-3449

From: Maureen Martowska [mailto:maureen.martowska@gmail.com]
Sent: Tuesday, September 18, 2018 11:46 AM
To: Del Ciampo, Joseph
Subject: Fwd: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8

Mr. DelCiampo,

Could you also be so kind as to provide me with the email sent by Judge Adelman referenced in item 1-7 of the Rules Committee Agenda for Sept. 17, 2018, or direct me to where it is posted for public review.

Thanks,

Maureen Martowska

---------- Forwarded message ---------
From: **Maureen Martowska** <maureen.martowska@gmail.com>
Date: Tue, Sep 18, 2018 at 11:12 AM
Subject: Rules Committee Hearing - Sept. 17, 2018 - agenda item 1-8
To: <Joseph.DelCiampo@jud.ct.gov>

Hi Mr. DelCiampo,

I noted that the Rules Committee took up agenda item 1-8 yesterday. Whereas the minutes have not been posted yet, can you please advise as to the outcome of that particular agenda item.

> **Item 1-8** - Proposal by Ms. Maureen M. Martowska to amend Sections 25-60 of the Practice Book. On 2-26-18, at the request of Judge Bozzuto, Chief Administrative Judge, Family Matters, the Rules Committee tabled the matter until Martowska v. White, AC 39970, was decided. (On 7-31-18, the Appellate Court dismissed that case for lack of jurisdiction over the Appeal.)

Thanks for your cooperation.

Maureen Martowska

Maureen M. Martowska
2 Edgewater Dr.
Lakeville, MA 02347

November 19, 2018

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
P.O. Box 150474
Hartford, CT 06115-0474

Dear Rules Committee members,

I recently received a copy of Judge Albis' Oct. 4, 2018 response relative to my proposed changes to Practice Book § 25-60 relative to item #3-3 of the Nov. 19, 2018 Rules Committee Agenda (previously identified as agenda item # 2-6 of the Oct. 15, 2018 Rules Committee Agenda). As you are aware, I have sent two letters to this Rules Committee to date: 1) the first letter dated May 11, 2017, and 2) the second letter dated Oct. 8, 2018. I note that item #6 of the Minutes of the Rules Committee regarding the Oct. 15, 2018 meeting indicated that Judge Albis was to be afforded an opportunity to comment on my proposed comments, yet Judge Albis' response letter of Oct. 4, 2018 predates my Oct. 8, 2018 letter. So it is uncertain as to whether Judge Albis truly had the opportunity to review the matter in light of my then current remarks.

I am disappointed by the lack of timeliness with which my proposed changes have been addressed. It appears there was an effort to table the matter several times in the hope of getting some guidance from an appellate decision (*Martowska v White, HHD-FA-05-4017673; AC39970*) relative to the topic of psych evaluations and their release. Unfortunately, the appellate court dismissed that matter for lack of subject matter jurisdiction.

Independent of the outcome of the aforementioned case, it certainly falls within this committee's purview to assess and make decisions relative to rules of how psych evaluations are to be handled, included consideration of balancing the need to ensure judicial discretion while also ensuring that parties are not denied due process and that their constitutional rights are protected, ensuring all parties have equal access to the courts and court documents. Judge Albis noted in his response letter that he felt "*an appropriate standard already exists . . .*" in regard to access to reports covered by P.B. § 25-60, referencing the "abuse of discretion" standard.

My specific concerns regarding the "abuse of discretion" standard relative to psych evaluations are that such a standard is ripe for abuse where stigma is a pervasive issue presently impacting the very vulnerable population of litigants with either suspected or known mental health, intellectual, and/or cognitive disabilities. In pertinent part, when a party is denied access to a psych evaluation by a judge who fails to provide any reasonable articulated basis for such, then that party (who is already finding the court system extremely challenging) is further put at a disadvantage in that he/she will be unable to bring an appeal because appeals require "perfecting the record." It is my understanding that in the majority of cases, Motions for Articulation are often unsuccessful. Accordingly, the litigant is left unable to appeal and is denied due process in that without access to his/her psych evaluation , the denied party is unable to even determine how best to prepare and move his/her case forward.

My son's case highlights the disparity in treatment of those with mental health disabilities and those without. Despite the psych evaluator's instruction to release the psych evaluation to both parties and TWO court decisions (one from the family court and one from the appellate court) ordering the release

of the psych evaluation to my son, the family court refused to do so, noting an "informal notation" as the basis for such denial and also advising him at a status hearing that he was not a party to the case since he was pro se and not represented by counsel. Meanwhile, the court did allow him to "view" his psych evaluation at the courthouse, while transcripts of the status hearing will note that the court forbade him from taking verbatim notes or making a copy of his evaluation. These restrictions were ONLY placed on my son and not the opposing party who was represented by counsel and who could access a copy of the psych evaluation, unlike my son – a litigant previously granted ADA accommodations specifically for his significant cognitive and memory deficits. That was the unlevel playing field afforded my son.

Both substantive and procedural due process demand both parties should have equal access to court documents as well as an equal opportunity to prepare their case and mount a defense in their case. When a parent is denied access to a key psych evaluation that might deny him/her access to the care and custody of his/her child in whole or in part due to the party's inability to review the evaluation and challenge its completeness, veracity, process, expertise, etc., it deprives the parent of fundamental Fourteenth Amendment due process rights that should be subject to strict scrutiny.

Traditional notions of fair play suggest that all parties have a right to review the evidence either for or against them. It protects a vulnerable population of litigants, both those with perceived or real mental, intellectual, or cognitive disabilities from undeserved biases and discrimination precluding them from meaningful participation in preparation and defense of their own cases as a result of very real stigma.

Lastly, Judge Albis failed to address my comment relative to the automatic admissibility of psych evaluations . I still believe such a process violates the Rules of Evidence that were established for the purpose of ensuring the trustworthiness/reliability of evidence based on certain standards, including Daubert standards for threshold admissibility of scientific evidence (reference pg 2 of my May 11, 2017 letter). In *State v Porter*, 241 Conn. 57, 694 A.2d 1262 (1997), the CT supreme court decided the evidentiary standard to be implemented in CT stating:

> Only by being knowledgeable, in at least a basic way, about the issues surrounding the scientific evidence before them, can judges discharge their duties properly. Accordingly, Daubert, at its most fundamental level, merely directs "trial judges consciously [to] do what is in reality a basic task of a trial judge-ensure the reliability and relevance of evidence without causing confusion, prejudice or mistake." *Id.* at 758.

I have enclosed an amicus brief template dated April 28, 2017 by Linda Gottlieb, LMFT, LCSW-R. Linda Gottlieb is a member of the American Association for Marriage and Family Therapy and has previously submitted amicus briefs relative to the reliability of psych evaluations. This is submitted for your further consideration as to whether automatic admissibility of these evaluations is prudent. Ms. Gottlieb specifically notes that psych evaluations in cases of parental alienation are extremely inaccurate and unreliable as she points to factors on pgs 10-11 in her amicus brief.

Thank you for your further consideration,

Maureen M. Martowska, J.D.
508-946-0767
maureen.martowska@gmail.com
Member, Parent Empowering Parents (PEP) Advisory Board
Lurie Institute for Disability Policy
The Heller School for Social Policy and Management
Brandeis University, Waltham, MA

Member of MA Chapter of National Alliance of Mental Illness

Encl.

Linda J. Gottlieb, LMFT, LCSW-R
www.endparentalalienation.com
Ms.lgottlieb@gmail.com

35 Slocum Rd
Beacon, NY 12508
(631) 707-0174 Office
(845) 859-5505 Fax

Honorable_____
Courthouse
street
City, State

Dear Judge _____:

Attached you will find a twelve (12) page notarized copy of my ***Amicus Brief documenting the inaccuracies, misleading results, and limited relevancy of the standard psychological tests commonly given in evaluations for custody and parenting time arrangements. These tests are particularly misleading—and essentially erroneous—when the examinee being assessed is a targeted or alienated parent. The test results should therefore be given little or no weight in custody evaluations regarding the targeted or alienated parent.***

Should the court wish to contact me for clarification or confirmation, my office phone number is (631) 707-0174, and I would be more than happy to opine telephonically or via other electronic communication, under Oath, about any and all questions Your Honor would inquire of me.

I make an explicit point that I have not evaluated the parents/guardians or the child in the matter before your Court for the purpose of this Brief, nor do I favor one party over another. I offer my professional opinions given my history of four decades of professional work experience and evaluations in the area of high conflict divorce. I trust my statements will carry weight in Your Honorable Court in consideration that psychological tests are an inaccurate and misleading measure of the competency of a parent and of that parent's parenting abilities. I declare that I was neither compensated nor otherwise received any financial compensation or other benefits for writing this Brief.

Respectfully signed on letterhead, notarized and submitted for the case of *Plaintiff v Defendant*

Linda J. Gottlieb, LMFT, LCSW-R
Licensed Marriage Family/Relationships Therapist, Speaker and Published Author
Member of American Association for Marriage and Family Therapy (AAMFT)
website: www.endparentalalienation.com e-mail: Ms.lgottlieb@gmail.com
Office/Practice Location: 35 Slocum Road, Beacon, NY 12508
(631) 707-0174 Phone (845) 859-5505 Fax

BEFORE ME, the undersigned Notary Public, on this day personally appeared LINDA J. GOTTLIEB, who being by me duly sworn, on her oath deposed and said that she is an amicus curiae in the above entitled and numbered cause; that she has read the above and foregoing amicus brief, and that every statement contained therein in within her personal knowledge and is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the _____ day of _____, 2017 by Linda J. Gottlieb LMFT, LCSW-R.

_____
NOTARY PUBLIC, STATE OF NEW YORK

Case No

Courthouse

Plaintiff v Defendant

AMICUS BRIEF DOCUMENTING THE LIMITED RELEVANCY OF PSYCHOLOGICAL TESTS IN EVALUATIONS FOR CUSTODY AND PARENTING PLANS

Honorable____
Courthouse
Street
City, State

Report of Linda J. Gottlieb, LMFT, LCSW-R

Dear Judge____:

My name is Linda J. Gottlieb, LMFT, LCSW-R, and I am writing this Amicus Brief for the purpose of educating the Court about the numerous inaccuracies, biases, and limited relevancy of the psychological tests that are typically given in evaluations for custody and parenting plans. The misuse of these tests is exacerbated in alienation cases because of two critical factors: 1) these cases are highly counterintuitive and 2) these cases are highly complex and require a level of specialty that the typical forensic evaluator lacks.

Of particular note, psychological testing in custody evaluations is generally optional—that is, not required by guidelines or standards, such as those promulgated by the Association of Family and Conciliatory Courts, the American Academy of Matrimonial Attorneys, the American Psychological Association, the National Association of Social Workers, or by most state governing agencies. Indeed, I have found in my practice, having completed several thousand custody evaluations, that observation of the parents in interaction with each other and in interaction with their children, is much more informative of a parent's parenting abilities, readiness to work cooperatively with the

other parent in co-parenting, and willingness and ability to support the other parent's relationship with their child. Information derived from such observations is much more relevant to this matter before the Court regarding custody and visitation matters.[1]

Regarding the tests, themselves, I beseech the Court to take heed of the comments by Joel Klass, M.D. and Dr. Joanna Peros, PSYD, RN, in their article, "Ten Signs of Questionable Practices in Custody Evaluations," published in The *American Journal of Family Law*, (2011). Vol. 25 *(3)*, (PP.81-86,) in which they assert the following, "Most psychological tests are not normed on parents undergoing the stress of custody evaluations." (P. 82.)

These mental health professionals provided support for this finding by affirming that:

> "There is no proven advantage for doing Rorschach tests, IQ tests for normally functioning adults, Draw a Person tests, House–Tree–Person testing, Kinetic Family Drawing tests, unstandardized computerized tests or many other tests with unproven results....In addition, for an evaluator to suggest that only by doing extensive psychological testing can an issue be determined is to distort the really more important resources available to assess crucial areas." (P. 82.)

The above mental health professionals suggest alternatively a more informative assessment tool:

> "Far more important than the psychological test results are other real-life conditions under which the child thrives or fails." (P. 83.)

I agree with the above mental health practioners regarding their assertion that "the conditions under which a child thrives or fails" can be better evaluated—for purposes of custody recommendations—by observing the family dynamics; such dynamics to include, but are not limited to, the family system as a whole and of its various subsystems, such as the parents and children together, the children with each parent, the parental subsystem, the sibling subsystem, and the nuclear family members with extended family members.

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[1] While interviewing all parties in a custody evaluation is good clinical practice as well as a requirement in most states and by most guidelines or standards promulgated by professional organizations, interviewing the child and the favored parent is ***neither a necessity nor*** a standard of practice in order to arrive at a clinical finding to rule alienation in or out. Firstly, the standard to arrive at a clinical finding is that the case documentation be of sufficient quality evidence. Secondly, a custody evaluation and an evaluation for parental alienation are very different evaluations—not the least of which is that an alienation evaluation is simultaneously a child abuse investigation. The requirement here is to protect the child as soon as the finding for alienation is made—and you do not wait to interview the child or favored parent if the finding is reached without doing the interviews. While it is common that, when alienation is alleged, it is typically in a custody case, you cannot impose custody standards upon the evaluation for alienation. So to reiterate, the specialist in alienation can readily arrive at findings based exclusively on the case file—as long as it contains adequate quality information. This is particularly true when the record has documented numerous direct quotes from the parties. Direct quotes are almost likely being there for the reviewer.

Other significant factors to be evaluated are input from teachers, therapists, coaches, religious advisors, and other professionals who interact with the family as a whole and/or with its subgroups and with its individual members. Of particular importance, one of the more critical criterion as to whom is the better parent is the willingness and capability to facilitate and insist upon a meaningful and substantial relationship between the other parent and their child.

Particularly when the forensic evaluator is a non-specialist in alienation and therefore likely lacks sufficient pattern recognition for alienation,[2] observation of the interactions among and between family members in various subgroups will reduce the likelihood of missing the alienation—a very common clinical error occurring in alienation cases. Direct observation of the family members' interactions has the potential for providing the non-specialist with more accurate information that do psychological tests as to the family dynamics. Yet, such observations are rarely sufficiently undertaken in custody evaluations. The observational component of custody evaluations are usually minimal, not comprehensive, and not given the weight that is warranted.

The above authors whom I cited have further alerted judges and others who influence questions of custody and parenting time of the following:

> "Judges should know that psychological tests can carry a warning that they are not to be used without clinical correction or for forensic purposes to determine legal issues. Psychologists need to make these warnings known in every report where such tests are used. Without the court knowing the limitations and published precautions on using psychological tests in legal cases, too much reliance on the psychological tests can result in injustice for parents and children. When a patient in a hospital was talking to you while their EKG machine is showing a straight line, you throw out the machine and not wheel out the patient. So it is with psychological testing. Reality trumps all the psychological tests known....An overreliance on limited validity psychological test results can violate the basic legal right to have judgments based on actual behavior and not on thoughts, feelings, or psychological tendencies." (P. 83.)

Of particular note, these tests do not take into account the effects of the stress and the persecution that the targeted/alienated parent undergoes that results from a myriad of false and malicious child abuse and domestic violence allegations. Nor do these tests take into account the effects of the unjustified denial/suspension of visits with their children nor the maltreatment and rejection by their children and the other parent. And finally, these tests do not account for the stress resulting from the financial burdens—frequently

[2] I have written in other Amicus Briefs and in articles that cases of alienation are highly complex and counterintuitive. Compounding the problem for arriving at correct findings is that the typical forensic evaluator and mental health clinician lack adequate training and experience with this phenomenon and therefore either miss the alienation altogether or confuse it for estrangement. The resulting findings, therefore, are usually backwards and wrong.

resulting in bankruptcy—required for defending against the myriad of false, malicious abuse allegations as well as the cost for pursuing legal remedy for the violations of the targeted/alienated parent's parental rights.

In my professional practice, for example, I have frequently encountered the double-bind situation that the targeted/alienated parent confronts when undergoing the most commonly used psychological test known as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). One question on the test inquires as to whether the examinee believes that people are out to get her/him. Well, after having been falsely accused of child abuse and/or domestic violence allegations (frequently multiple times), being unjustifiably railroaded by the other parent out of her/his child's life, not receiving justice from the justice system due to multiple delays in addressing the violations of her/his parental rights, and frequently having to exhaust all resources due to legal fees, the targeted/alienated parent justifiably believes that many individuals are, indeed, "out to get" her/him. As the cliché goes, "Even paranoids have enemies." But when answering this question truthfully—that many individuals are, indeed, out to get her/him—it invariably results in being diagnosed as having a "paranoid personality disorder." Were the alienated parent to take the test PRIOR to the onset of the alienation, I am convinced that her/his answers would be very different: namely that there would be no response indicative of a diagnosis of paranoia.

My experience in reviewing the results of the MMPI-2 for numerous alienated parents is confirmed by Gerald H, Vandenberg, PhD, ABPP, in his article entitled, "Custody Evaluation: The Expert Witness and the Assessment Process," published in *The American Journal of Family Law* (2002). Vol. 16, (4). PP. 253-259):

Dr. Vandenberg concludes that custody evaluations are often inaccurate and exaggerate results. He states:

> "The data *[from the MMPI test]* must be interpreted and cross-checked using multiple sources of information and *considering the overall context.* [Italics mine.] For example, a "paranoid" scale on a given test may have multiple meanings both in relation to other information and in relation to context." (P. 257.)

I maintain that it is the traumatic situation of being a victim of alienation that is the cause of the targeted/alienated parent's questionable test results. The context of the alienation dynamic must be evaluated for its effects on the examinee and how it contaminates the testing results for an otherwise high functioning parent. But assessing for the targeted/alienated parent's situation is rarely done. Failing to account for the alienated parent's traumatic situation and its impact on test results as well as the person's current functioning is known as the Fundamental Attribution Error (FAE)—as documented by Steven Miller, MD, in his chapter entitled, "Clinical Reasoning and Decision Making in Cases of Child Alignment," in the 2013 book entitled, *Working with Alienated Children and their Families,* edited by Baker and Sauber.

The targeted/alienated parent frequently presents as a trauma victim and may exhibit manifestations indicative of the trauma. That is, should the alienated parent manifest symptoms, they are situationally caused and maintained and are not dispositional or internal to the person. Dr. Miller refers to the targeted/alienated parent as presenting with the 4 A's: angry, agitated, anxious and afraid. Of course, this is so typical of a trauma victim! In contrast, the alienating parent is in a peachy situation: control and allegiance of the children, often having co-opted the professionals, and setting the Court's agenda. The alienating parent, according to Dr. Miller, presents with the 4 C's: cool, calm, convincing, and conniving.

In my practice with more than 300 alienated parents, once there is an end to the alienation, symptoms typically disappear—and disappear rapidly. That has been my experience with every alienated parent who was reunited with his/her children. These parents are as competent, nurturing, supportive, and protective of their children as they had been before the onslaught of the oppressive, humiliating, deprecating, rejecting, and bankrupting results of the alienation.

Although recognizing that the commonly used instruments in custody evaluations can offer insight into some parenting issues, Dr. Vandenberg emphasizes the limitations of the MMPI, the Millon Clinical MultiAxel Inventories, or the Rorschach that, "do not address the issue of child contact or parenting directly." (P.257.)

Dr. Vandenberg instead suggests other instruments because "other instruments assess parenting practices, parenting satisfaction, rapport, collaborative ability with the other parent, etc. and as such are more directly relevant to parenting itself." Such other tests are The Parent Child Relationship Inventory, The Parenting Satisfaction Inventory, and The Parenting Skills Inventory, as recommended by Dr. Vandenberg. (P. 257.)

Nevertheless, I have rarely experienced that these latter instruments are employed in custody evaluations.

Worth noting, in his article entitled, "Child Custody Evaluation Practices: More Experienced versus Less Experienced Examiners," published in *The American Journal of Family Law*, (1977), Vol. 11 *(3)*, (PP. 173-177) Marc J. Ackerman, PhD., documented that his research concluded that "More experienced examiners observed for a significantly longer period of time, while those less experienced spent significantly more time performing psychological tests." (P. 174)

And finally, Dr. Vandenberg offers a cautionary note, "In the context of a custody battle it is in the *interpretation* of the evaluator that the skill and expertise of the evaluator comes into play." (P. 258.)

I cannot concur more with Dr. Vandenberg. It behooves the Court to determine if the evaluator has acquired sufficient, specialized knowledge, training, and experience in family dynamics in general and in alienation specifically. Becoming a specialist in

alienation requires many years of study beyond the coursework for most mental health degrees, regular collaboration with other alienation experts, and remaining current with the developing clinical literature about alienation. Should the court still wish to give weight to the psychological test's findings, the test administer should be required to provide the raw test scores, be asked to defend how he/she had arrived at the interpretations, reveal whether he/she or a computer had interpreted the raw scores[3], provide the reasoning behind the selection of what scales and what questions had been selected for interpretation, and finally, provide what limitations he/she feels apply to the test.

Indeed, Dr. Klass and Dr. Peros acknowledge the preference for a social worker to be the forensic evaluator for custody evaluations in recognition of that discipline's superior expertise in understanding family dynamics. They stated it as follows:

> "Psychiatrist and psychologist evaluators too often ignore the expertise of social workers. Social workers traditionally have more experience in doing home studies, and charge less than psychiatrists and psychologists for doing so. Often, a court-appointed psychologist or Guardian takes the liberty of doing home studies disregarding their lack of expertise in the field. Their reports neglect all the subtleties detected by a capable social worker who has an eye for important details....psychologist evaluators can improperly charge psychologist fees for doing home studies that should be done by a social worker, at much less cost." (PP. 83-84.)

And of course, the professional education, training, and experience of the Marriage and Family Therapist provide the greatest expertise in assessing family dynamics and thus the matters before this Court. To use a relevant metaphor, a specialty in family dynamics—and in alienation in particular—is as different from every other clinical model as matrimonial law is from tax law, from international law, from corporate law, etc.

Inaccurate interpretation of psychological test interpretation is exacerbated because alienation cases are highly counterintuitive, and the non-specialist in alienation often falls prey to these counteractive issues. By counterintuitive, I mean the brain is hardwired to make very common thinking errors; that is, the mind is tricked into getting things backwards and wrong—just as it does in optical illusions.

The following are a few of the many counterintuitive errors occurring in alienation cases:

1) If a child rejects a parent, it is presumed that the parent must have done something to warrant it. We simply tend not to think of another

[3] What the examiner often fails to reveal—despite the test authors' admonition to do so—is how the raw scores were interpreted. Most times, a computer interprets the scores, and a computer, obviously, cannot factor in the examinee's situation—such as for alienation. Computer interpretation is therefore a huge factor resulting in misleading test results—especially for alienated parents.

explanation: namely that the child had been brainwashed.. But if the alienated child were compared to foster children----children who had been removed from their parents due to actual abuse and neglect----a stark difference would be noted: namely that truly abused children crave a relationship with their parents of whom they are protective and not accusatory. Such assessments of foster children reveal just how anti-instinctual it is to reject a parent.

2) The child aligns with the abusive parent. While this behavior appears irrational, there is method to the child's madness: when abused by a parent, the child's self-esteem is attacked, resulting in the child feeling worthless, rejected, and unlovable. The child therefore engages in an undoing campaign through alignment with the abusive parent in hopes of acquiring the parent's love and approval. Additionally, the child is vulnerable to the manipulations of the alienating parent, such as bribery, abuse of authority and power, and permissiveness. We know how it is generally the targeted parent who imposes appropriate discipline to fill the parental vacuum left by the alienating parent. By doing so, targeted parents are incredibly misunderstood and doubly victimized by the professionals, who then label the alienated parent as being too harsh and not respectful of their children's feelings and wishes.

3) The pathological enmeshment between the alienating parent and child appears to be healthy bonding. It is not. Rather, it is severe boundary violation by the alienating parent against the child. As a result of this dysfunctional relationship—akin to symbioses—the alienated child loses her/his individuality; must suppress her/his natural feelings of love and need for a parent; and is manipulated to do the bidding of the alienating parent.

4) It is counterintuitive NOT to believe the brainwashed child, who sounds so credible in relating, with passion and conviction, "horrific" allegations of child abuse at the hands of the targeted parent. This counterintuitive issue is understood by the alienation specialist who recognizes that alienation is akin to a cult brainwashing in which the child expresses the beliefs, feelings, and wishes of the alienating parent.

Inaccuracies in the interpretation of psychological tests further result from evaluator bias, which is exacerbated by the previously discussed counterintuitive issues in alienation. By bias, I mean that the evaluator falls prey to numerous cognitive and clinical errors—errors that commonly occur in and must be controlled for when assessing any clinical situation. But such errors are rampart in alienation cases because these cases are so complex—involving severe child alignment, psychopathology, and personality disorders. I previously referenced the FAE, as one serious cognitive error commonly occurring in alienation cases. It is beyond the scope of the amicus brief to discuss these errors, but the

reader may become familiar with them by reading Dr. Miller's chapter, which I previously referenced.

According to Dr. Miller, clinicians who lack expertise in the specialty of alienation are in way over their heads, and, due to the complexity of these cases, are often practicing outside their area of expertise. Complicating this calamity even further, they are unaware of their lack of expertise, and this results in their certainty of their incorrect findings. Dr. Miller asserts:

> "Clinicians who attempt to manage them [*cases of alienation*] without adequate skills are likely to find themselves presiding over a cascade of clinical and psychological disasters." (p. 11)

In brief, I urge the Court to be judicious in assigning weight to psychological test results for the following reasons:

a) According to the various tests' authors, psychological tests are designed for hypothesis generation not for hypothesis confirmation. The common practice of forensic custody evaluators to use the tests for hypothesis confirmation is a misuse of the test—and generally leads to disastrously incorrect findings in alienation cases.

b) The tests' interpretation is subjective, and, due to the counterintuitiveness of alienation, many evaluators often develop biases leading to subjective misinterpretation. (For example, on the MMPI-2 test, there are more than 130 and almost 600 questions. It is, therefore, not practical to interpret the entire test. Which scales the evaluator emphasizes and which are de-emphasized is subjectively selected and often results in skewed results.

c) The MMPI-2 has not been validated for a person undergoing a high conflict custody case and one that involves alienation. The reference population of the MMPI 2 is a normative population based on the 1980 census—this population is therefore not matched to the severely alienated parent, which means that the test results are likely questionable. The usual test results indicating paranoia and narcissism for the targeted/alienated parent, in actuality, reveals exactly what one would expect from a person undergoing a severe case of alienation – particularly when their concerns have been trivialized, dismissed, and criticized by numerous mental health and legal professionals who are frequently co-opted by the alienating parent. Targeted/alienated parents are a trauma victim, and trauma victims are not a matched population to this reference population.

d) The interpretation of the raw data cannot be done in isolation from the person's situation. The clinical context of someone undergoing severe

alienation is significantly different from the context of a general population. So, for example, if a person took the test the day after she/he had been falsely accused of sexually abusing her/his daughter; after someone had been evicted from the home due to false child abuse or Domestic Violence allegations; had been evicted with little more than the clothes on her/his back; had been apprised by her/his attorney that he/she could be sent to prison for a long time; or merely had been cursed out by her/his beloved children, I would not call any one of these situations optimal test conditions. A person taking the test under such conditions will likely appear to be paranoid after going through this. The targeted/alienated parent does not exist in a normative situation.

e) The clinical context must be considered as a factor in assessing the raw data (the person's answers.) Often the context is not considered----particularly if typically interpreted primarily by a computer and not the evaluator, which is often the case. It is therefore imperative to determine how the raw data was interpreted because a computer cannot assess for the context of the test taker's clinical situation.

f) Due to biases, the custody evaluator may have subjectively and partially chosen to emphasize some clinical scales of the MMPI and de-emphasize or ignore others in order to portray the targeted parent/alienated parent in the worst light and the alienating parent in the best light. Unfortunately, I have witnessed this in several cases I have testified on.

g) We should not be surprised that the targeted/alienated parent frequently tests positive for paranoia. After all, the children, the other parent, and often the professionals in the mental health and judicial systems are talking negatively about that parent, filing false allegations of child abuse and domestic violence, etc. Even paranoids have enemies.

h) The test answers that a targeted/alienated parent would have given prior to the onset of the alienation would likely be very different than the answers given subsequent to the onset of the alienation.

I conclude this Amicus Brief by maintaining that a more relevant criterion than the questionable test results for determining who is the better parent, is the parent who is more likely to facilitate the relationship between the other parent and their children. This is usually a criterion that can be found in most state laws, statutes, and/or case law. It should be adhered to. Assessing the parent in important settings and relationships will provide much more accurate findings than the psychological tests. If the evaluator does not have sufficient pattern recognition for alienation—based upon extensive experience with this clinical situation—then observations of the family members interactions with each other should be relied upon rather than on the above referenced test results. Such observations are more likely to better assess the parenting abilities and emotional

functioning of the parents.

I am enclosing with this Amicus Brief my Professional Resume/Curriculum Vitae (CV). Please feel free to contact me with any questions.

Respectfully signed, notarized and submitted for the case of *Plaintiff v Defendant*

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BEFORE ME, the undersigned Notary Public, on this day personally appeared LINDA J. GOTTLIEB, who being by me duly sworn, on her oath deposed and said that she is an amicus curiae in the above entitled and numbered cause; that she has read the above and foregoing amicus brief, and that every statement contained therein in within her personal knowledge and is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, on this the _____ day of _____, 2017 by Linda J. Gottlieb LMFT, LCSW-R.

NOTARY PUBLIC, STATE OF NEW YORK