

Intimate Partner Sexual Abuse:

DISCUSSION GUIDE FOR FACULTY

LAURA MAGNUS V. PHILIP MAGNUS

Q1.

What concerns, if any, about risk and intimate partner sexual assault do these allegations raise?

What “red flags” in the pleadings lead you to those conclusions?

What else would you want to inquire about in order to come to a conclusion about the dynamics present in this marriage?

Laura Magnus has not alleged intimate partner sexual assault in her complaint, but there are several "red flags" in both parties' papers. These "red flags" include:

- references to her husband's controlling and demeaning conduct
- his open and unapologetic use of prostitutes and escorts
- the question of whether he transmitted a sexual infection to his wife
- his uncontroverted interest in pornography; and his negative characterization of her sexuality

This was evidently a marriage in which sexual issues caused great tension.

A woman being subjected to intimate partner sexual abuse may be reluctant in the extreme to disclose that fact, even to her lawyer. Advocates, lawyers, and prosecutors who have worked extensively with women in these circumstances consistently report that the sexual aspects of abuse are almost never disclosed in initial interviews. Patient questioning that allows the woman to reveal the sexual abuse in a safe setting is nearly always required.

Even after disclosing her degrading experiences, many women are reluctant to include that history in litigation, whether for an order of protection, custody, or divorce. Many lawyers will try, as well, to make out a case without having to bring in the issue of sexual assault, as injection of the issue changes the tenor of the case.

Because of the increased risk of danger in these cases, the court should seek to gain a full understanding of the nature of the abuse in the Magnus home.

Bearing in mind increased risk to children, appointment of a law guardian who is well trained in domestic violence issues for the Magnus children would be appropriate.

Your jurisdiction requires you to appoint a law guardian for the children, ages 11, 8 and 6. You do this. At the next court appearance, the law guardian recommends against overnight visitation with the father, as all three children express fear of him and report a high level of conflict in the home when he resided there. Moreover, they find it disruptive to their school life to reside in two different homes during the week. All three children are relieved that he has left and dread their visits, expressing worry for their mother's well-being in their absence.

Q2.

At this point you:

[Choose all that apply]

- **Admonish the mother that she is not to speak negatively of the father and that she is to support the children's relationship with him to the very best of her ability.**
 - While such a warning is not incorrect, it would be better to address these remarks to both parties, particularly at this early stage of proceedings when facts are not yet sorted out.
- **Continue visits unchanged in order to strengthen the father-child bond**
 - Such an order would not take into account the safety concerns raised by the law guardian and is contraindicated. A "tiered approach," beginning with supervised and restricted visits, permits the court to obtain a better understanding of potential risks to children.
- **Suspend overnight visits because the law guardian has had a better opportunity than the court to assess the needs of the children**
 - This would be a prudent step, particularly in light of Mr. Magnus' admitted use of pornography and prostitutes.
- **Suspend week-day visits but allow alternate weekend overnight visits to see how the relationships develop**
 - Such an order would not take into account the safety concerns raised by the law guardian. A "tiered" approach is more prudent, allowing the court to gain deeper insight into family dynamics.
- **Appoint a forensic evaluator to assist the court in determining whether one or both parties are attempting to manipulate the children in order to gain advantage in the divorce proceedings.**
 - While many courts considering custody disputes rely on assessments provided by forensic evaluators in order to gain more insight into the family's dynamics and to determine the best interests of the child, the court must take care not to substitute the forensic evaluator's judgment for its own.
The court should develop a standardized form that requires evaluators to learn about and take into account all relevant issues, including domestic violence and intimate partner sexual abuse. Unfortunately, some custody evaluators fail to even review the court records of domestic violence

matters and ignore the issue totally.

- **Refer the parties for mediation.**
 - While mediation and other types of alternative dispute resolution have been found, in some cases, to reduce the animosity, friction and dissatisfaction that so often accompany divorce, these are not appropriate resources when domestic violence is present in the marriage. The history of abuse, and threat of further intimidation and abuse, makes it nearly impossible for a victim to enter mediation on a level playing field. When one party has a history of asserting “power and control” over the other, as is nearly always the case when domestic violence is present, the party who has been abused is at a significant disadvantage in mediation.

While being cross-examined at a hearing on the issue of custody, Ms. Magnus asserts for the first time that her husband sexually assaulted her for many years. She explains that she began sleeping in her daughter’s room after she awakened on numerous occasions to find Mr. Magnus penetrating her vaginally because she believed he would not attempt such conduct in their child’s presence. Moving to a different room under the guise of helping her daughter with “night terrors” enabled her to escape the incidents without confronting him directly. Ms. Magnus also alleges that her husband would sometimes choke her to the point of unconsciousness and then perform sex acts upon her. She alleges that his conduct caused her long-lasting physical injury, including pain and incontinence, and that while she sought medical treatment for her condition, she did not do so contemporaneous to an assault.

She states that she failed earlier to disclose this information to anyone (including her lawyer) because she was deeply humiliated by the experiences, and because she felt that she was obliged to engage in marital relations with her husband on whatever terms he enjoyed and had come to view it as an unhappy reality of her marriage. She also did not want their children to become aware of this aspect of their father’s character.

Ms. Magnus’s lawyer moves for a continuance and permission to amend the complaint to include this conduct as additional grounds of cruelty. Mr. Magnus refuses to stipulate to an amended pleading, asserting that the allegations are a recent fabrication interjected to affect the custody outcome, and that he would be irreparably prejudiced by recasting of the issues at this stage of the proceedings. He nevertheless demands production of the medical records documenting her alleged injuries as well as her therapist’s notes.

Civil Rule of Procedure 3025(b) in your jurisdiction states:

A party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances.

Q3.

At this point you should:

[Choose all that apply]

- **Deny the continuance because it raises matters extraneous to determination of custody and visitation**
 - Allegations of domestic violence and intimate partner sexual assault are always relevant to determination of custody and visitation. Because these issues are also important factors for a court to consider in resolving questions of marital fault and risk, Ms. Magnus should be given the opportunity to develop her claim.
- **Allow amendment of the petition because of the importance of the issues involved**
 - While it would be preferable, in the interest of efficiency of litigation, to have allegations of sexual abuse raised at the outset of the proceedings, the reality is that this often does not happen. Where state law permits liberal amendment of pleading, delay in disclosing these types of allegations may be excused as the result of the trauma caused by the abuse.
- **Direct production of Ms. Magnus's medical and counseling records for in camera inspection**
- **Direct production of Ms. Magnus's medical and counseling records to counsel for Mr. Magnus**
 - When considering the necessity of disclosure of confidential records to an opposing party, the better practice, where such disclosure is required by state law, is to review the records in camera.

The amended petition lists 43 instances when Mr. Magnus sexually assaulted Ms. Magnus. The alleged conduct is sadistic and disturbing. Ms. Magnus has also amended her prayer for relief, asking that Mr. Magnus's share of the marital assets be significantly reduced because of his "egregious conduct" during the course of the marriage.

Under the State's law governing distribution of marital property, the trial court is accorded wide discretion in property allocations and alimony decisions, and case law has established that "the conduct of the parties...is relevant and admissible" in equitable distribution.

Q4.

At this point in the proceedings, you:

[Choose all that apply]

- **Bar exploration of the husband's alleged conduct as not sufficiently relevant to how the marital assets should be divided**
 - While no-fault divorce is the modern trend in most jurisdictions, the presence of what is often termed "egregious fault" is nevertheless an important factor to consider when dividing marital assets. An abusive spouse may be found to have forfeited interest in marital property because of that conduct. Even if the conduct may not be considered on the question of equitable distribution, the court should consider such conduct on the question of parental contact.
- **Direct the parties to submit to new forensic evaluations**
 - Resolution of factual disputes is more properly left to the court, not a forensic evaluator. In reaching an understanding of the scope of Ms. Magnus's injuries, however, expert testimony may be useful.
- **Restrict Mr. Magnus's visits to supervised interactions in the home of the maternal grandmother until the factual issues concerning his conduct can be resolved**
 - Where there is intimate partner sexual abuse, there is an increased risk of child physical and sexual abuse, as well. Accordingly, great caution is appropriate in permitting any contact. When a reliable relative is willing to act as a supervisor for visitation, that can provide some contact without placing the children at greater risk. As a rule, the court should begin with a safe, restrictive setting for visitation until the full dynamic of the parent-child relationship is understood. Visitation exchanges are the setting for innumerable violent, and even lethal, confrontations between an abuser, the victim, and their children.

In support of his cross-claim for custody, Mr. Magnus seeks to introduce the testimony of Dr. Phil Baldwin, a "nationally recognized expert" in "Parental Alienation Syndrome."

Dr. Baldwin has interviewed both Mr. Magnus and the children at length and studied the pleadings submitted by Ms. Magnus. In particular, the evaluator expresses concern that Ms. Magnus "lacks appropriate boundaries" with their children, and that in particular she has for several years shared a bed with their youngest daughter, now six, and abandoned the marital bedroom. The evaluator noted Ms. Magnus' tendency to denigrate her husband and found that the children shared her low opinion of him. The evaluator felt that this was the result of Ms. Magnus' negative influence on the children rather than the result of any real misconduct on their father's part. Ms. Magnus had provided nearly all of the children's primary care thus far, and attended to their schooling and after-school activities while Mr. Magnus was involved in furthering his career. The forensic evaluator found that Mr. Magnus was now in a position to give more time to his children, could provide them with significant advantages, and that Ms. Magnus suffered from "inadequate personality."

Q5.

Should Mr. Magnus be permitted to present the expert testimony of Dr. Baldwin?

“Parental Alienation Syndrome,” or allegations of “parental alienation,” is a concept whose legitimacy has been discredited by every reputable, expert group, including judicial organizations, that have considered the matter.

This discredited “diagnosis” diverts attention away from the behavior of the abusive parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children's other parent.

In fact, manipulation of custody and visitation is quite often one more way in which an abuser will attempt to dismantle his wife's life in order to injure her. In some cases, the court may find that the children have adopted the abusive mentality of the batterer and belittle their mother, expressing a preference to remain with the father. In other families, as in this case, the children's fears will echo those of the abused parent.