

SOCIAL SERVICES

A Colorado custody evaluator who disbelieves 90% of abuse allegations recommended a teen stay under her abusive father's control

In Colorado family courts, parents can request an expert evaluation of their case, which sometimes includes allegations of abuse. Mark Kilmer is routinely appointed to evaluate families despite his own history of domestic violence.



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By **Hannah Dreyfus**, *ProPublica*

Elina Asensio had a restraining order in place against her father when she met with a court-appointed psychologist assigned to determine whether he should be part of her life.

She expected Mark Kilmer, the Colorado “parental responsibility evaluator” appointed to her parents’ custody case, would want to hear about the incident that had led to her father being charged with felony child abuse and pleading guilty to misdemeanor assault. The 14-year-old was surprised, then, as she talked to Kilmer on the front porch of her mother’s suburban Denver home in October of 2020, that he didn’t seem interested in learning about it.

A year earlier, according to **police reports**, her father had grabbed Elina from behind by her lucky charm necklace and hoodie and dragged her up a flight of stairs. “Dad, I cannot breathe. ... You’re

hurting me, stop it,” Elina had screamed, according to the police report. She was left with burst blood vessels on her eyelids and a deep cut from ear to ear where the necklace had dug into her neck, according to the police report. A child welfare investigator described the resulting scar as a “ligature mark,” the imprint left after strangulation.

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It was Elina who first brought up the incident, mentioning it after Kilmer asked why, “if you love your Dad,” she was not attending therapy with him, according to notes that accompanied Kilmer’s report to the court.

“I still feel my dad’s hands around my neck sometimes,” she recalled telling Kilmer, who is the brother of actor Val Kilmer.

He responded with a blank stare, she said.

Elina told him about other violent incidents involving her father, including one directed at a sibling, according to Kilmer’s notes.

Colorado family courts began appointing parental responsibility evaluators, or PREs, to custody cases 14 years ago as a privately funded alternative to court-furnished evaluators. The litigants shoulder the cost, which can run into the tens of thousands of dollars, and in some instances the PRE is paid by only one of the parents in a dispute. The intent was to allow a broader range of psychologists, including those the court could not afford, the opportunity to lend their expertise to custody decisions. They have operated with little oversight.

Elina didn’t know at the time they met that Kilmer says he does not believe about 90% of the abuse allegations he encounters in his work, or that he himself had been charged with domestic violence.

Kilmer was **arrested and charged with assault** in 2006 after his then-wife said he pushed her to the bathroom floor, according to police reports. Following the incident, the woman obtained a restraining order against him and he was required by the court to give up his guns pending resolution of the criminal charges, according to court documents.

The following year, he pleaded guilty to harassment and, in a separate divorce proceeding, temporarily lost decision-making power over his children because of concerns about his parenting. The court placed him on probation for 24 months while he completed domestic violence counseling. After he completed probation, the court dismissed the assault charge.

“Unfortunately, I had a conflicted divorce myself,” Kilmer said in an interview. “She made up these false allegations and had me arrested. It was pretty humiliating and shocking.” His guilty plea was the result of poor legal representation, he said, and he regrets not going to trial.

Kilmer, who received a doctorate in psychology from the California Graduate Institute, had also been previously **disciplined by the State Board of Psychologist Examiners** in 2009 for revealing confidential information about one client to another client in an effort to set them up on a date. He was required to have his practice monitored for a year but was allowed to continue working as a custody evaluator. (Kilmer said he obtained consent from

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both parties before introducing them, according to board records. The board noted clients “cannot consent to a boundary violation and/or breach of confidentiality.”) Today, Kilmer’s psychological license is in good standing.

Colorado’s State Court Administrator’s Office, which is responsible for vetting PREs, said a criminal misdemeanor conviction older than 15 years does not disqualify a custody evaluator from family court appointments. ProPublica found that four evaluators on the state’s roster of 45 PREs, including Kilmer, have been charged with harassment or domestic violence. In one case, the charges were dismissed. In the two others, it is unclear how the charges were resolved.

The court administrator’s office also said that discipline by the State Board of Psychologist Examiners does not disqualify an evaluator unless it currently affects their license. ProPublica found that 1 in 5 PREs, including Kilmer, has been sanctioned by the board, six times the rate of discipline among all psychologists with active licenses in Colorado.

One evaluator who works with victims of domestic violence was sanctioned after the state received a complaint alleging she had publicly referred to a domestic violence client as “full of shit,” and after she admitted to having a member of a domestic violence counseling group she oversaw do work in her neighborhood. Others were sanctioned for misrepresenting their credentials, and several failed to keep clients’ information private, including one PRE who revealed the home address of a domestic violence victim enrolled in the state’s Address Confidentiality Program, which endangered the client, the state board found.

None of the sanctioned PREs lost their licenses or had them suspended.

Prospective PREs are asked to disclose board violations from the past 10 years, which would “trigger” further investigation, according to a court spokesperson.

After Kilmer met with Elina and the rest of her family, he filed a report recommending that Elina’s father immediately gain equal custody of her siblings, and that he begin therapy with Elina and transition back to limited parenting time with her. Kilmer also recommended that he have equal decision-making authority over his children, including choices about their medical care, social activities and academic path. Kilmer described the father’s assault conviction as an “aberration” and noted that he had “considerable positive parenting skills and abilities.” He also recommended that Elina’s restraining order be modified so she could participate in reunification therapy with him.

Elina’s mother, Karin Asensio, who said she was fearful the judge would use Kilmer’s recommendations to reduce her parenting time, agreed to resolve the custody dispute through arbitration. There, the parents agreed to divide parenting time equally and to modify the restraining order so Elina could go to therapy with her father.

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“Mark Kilmer’s decision affects every day of my teenage life,” Elina said in an interview. “They let him speak for me but they wouldn’t let me speak for myself.”

Kilmer declined to comment on this or any case, saying it's prohibited by the court. "I am — forever — under a statute and direction from the Honorable Court to hold all of my cases in the strictest of confidentiality and privacy," he said in a statement to ProPublica.

But in an interview about his approach to custody cases, Kilmer said he does not believe a "great majority" of abuse allegations he encounters in his work.

"The #MeToo movement informs us that, you know, about 90% of all allegations are true, or something around there," he said. "In my forensic work, that's completely flipped on its head: About 90% of the allegations I hear are false." Kilmer emphasized the estimates are based on his "own experience," not scientific research.

"Sometimes the judge just cuts and pastes all my recommendations"

In Colorado custody cases that trigger legal disputes, family court judges may appoint an evaluator to assess the best interests of the children. The cost of these child and family investigators, who are not required to be **mental health professionals**, is capped at \$2,750, which can be paid for by the state or split between the parties.

But for parents willing to pay uncapped fees as high as \$30,000, Colorado law permits the appointment of a parental responsibility evaluator from a roster of state-approved experts, most of whom have masters or doctorate degrees in psychology.

The two-tiered system was created at the urging of psychologists who argued the courts' \$2,750 limit on fees didn't adequately cover their services, including in-depth personality testing for complex cases. As PREs, psychologists could work as court appointees without cutting their fees or curtailing their analytical methods.

PREs acknowledge that they wield tremendous influence over family court proceedings and are subject to little oversight or transparency.

This is by design, according to Bill Fyfe, who worked with the Colorado Supreme Court to draft procedures governing PREs and became one of the state's longest-practicing custody evaluators. The more costly and highly trained professional advisers were given as much independence as possible while still functioning as appointees of the court.

Fyfe retired from serving as a PRE in protest last year, after a new law took effect requiring increased oversight and training for custody evaluators. "The court shouldn't be involved in managing us. They're good people, but they have no idea what we do or how we do it," he said.

Kilmer and other PREs told ProPublica that judges accept their recommendations in the overwhelming majority of custody decisions, though that's impossible to verify because their reports are filed under seal and seldom made public.

"At this point in my career, sometimes the judge just cuts and pastes all my recommendations and puts it into the court order," Kilmer said.

Kilmer, 64, is tall and broad with blond hair, a square jaw and a beefy handshake. When he is not assessing parents in living rooms, in kitchens or on front porches, he sees clients at one of his several offices in the Denver area.

When Kilmer received his doctorate in 1998, the California Graduate Institute's psychology program was not accredited by the American Psychological Association, according to a spokesperson from the organization. The program now goes by a different name and has received APA accreditation.

Kilmer said he was attracted to PRE work because “it’s lucrative — as far as things go in psychology.” His fee averages \$14,000 per court-ordered report, but his charges can rise to more than \$30,000, he said. “People have a lot of money, and they just keep sending stuff to me.”

The domestic dispute Kilmer was charged for occurred in August 2006. When a Boulder County police officer arrived at Kilmer’s residence to investigate a report of an assault, Kilmer had already left, according to the police report. The officer found Kilmer’s then-wife on the bathroom floor complaining of pain on her left side. Two days earlier, she said, Kilmer had also blocked the entrance to their home and only moved after she threatened to scream and call 911. Kilmer was 6’1” and weighed 225 pounds, according to the report.

Asked if his criminal record comes up when he works with victims of domestic violence and abuse, Kilmer answered: “Just look at my resume, right? It’s like, look at what I’ve done and who I am and what I’ve been trying to put together for myself. Do you think, beneath all of this, I’m some kind of monster?”

Multiple parents said custody evaluators downplayed or omitted from reports to the court the traumatic and lasting effects of abuse they said they had experienced.

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ProPublica also spoke to 45 Colorado parents currently or recently involved in custody disputes with allegations of child and domestic abuse. In cases evaluated by a PRE with a criminal or disciplinary record, parents told ProPublica they only learned about that record after the court had appointed the evaluator to their case.

According to the APA's code of ethics, psychologists should recuse themselves if their personal histories could "reasonably be expected" to affect their objectivity or expose a client to harm or exploitation. Experts said it would be "highly unusual" for a psychologist who's been charged with domestic violence or child abuse to evaluate custody cases involving domestic violence or child abuse, especially if those charges were not disclosed beforehand.

"I would question such a custody evaluator's ability to look at claims of domestic violence or abuse in a fair and objective way," said Helen Brantley, a clinical psychologist who chairs the task force that developed the APA's guidelines for child custody evaluations in family law proceedings.



In this Jan. 15, 2015 file photo, a view inside Courtroom 201 at the Arapahoe County District Court in Centennial. (AP Photo/Brennan Linsley, pool, file)

Kilmer said he has never recused himself in 30 years working on over 600 court-ordered reports. "Once the court appoints me, that's it. There's no bailing out."

His call to action: saving kids. “Like the whole situation in Uvalde, with the cops,” he said, referring to the mass shooting at a Texas elementary school earlier this year. Surveillance video showed armed officers waiting more than an hour to enter a classroom and confront the gunman.

“There’s no not going in,” Kilmer added. “Sometimes people are really disturbed and violent and it’s just like, that’s part of the job.”

A Colorado statute requires courts and court-appointed evaluators to consider claims of domestic violence and child abuse in child custody cases.

Karin Asensio filed a complaint against Kilmer with the State Board of Psychologist Examiners, alleging that he failed to take her ex-husband’s assault conviction into account when making his recommendations. The board dismissed the complaint, stating that it did not amount to a violation warranting disciplinary action.

Evaluators’ findings in custody cases are consequential: The Leadership Council on Child Abuse and Interpersonal Violence **estimates that each year 58,000 children** are placed in the custody of an abuser. Since 2008, 864 children have been killed in cases where a divorcing or separating caretaker has been accused of the crime, according to the Center for Judicial Excellence, which tracks news reports of child deaths; in 117 of those cases, a family court was involved prior to the death but failed to prevent it.

Kilmer said he’s particularly skeptical of abuse allegations from a person who stayed in a relationship for a long time.

“People come in and say, ‘You know, this person has been terrible to me for 17 years.’ And you’ve just been hanging in there all that time and you had five kids? How was it really that bad all that time?” he said.

Then, he said, he'll meet the partner who's been accused of the abuse, "I look at their information and I'm like, 'Oh, these allegations are really not even possible.'"

More often than not, he said, the accusers are exaggerating "to see what kind of legal advantage they can get."

Conducting a Custody Evaluation During a Criminal Investigation

While the Colorado statute governing PREs requires evaluators to release their underlying case file to involved parties who request it, the files don't include some aspects of how evaluators arrive at their recommendations. PREs frequently conduct in-depth psychological testing, but may refuse to release the results to clients, forcing parents to hire another psychologist to review the data. And parents are not immediately privy to what was included and omitted from their final report.

The day after Kilmer released his report, Elina's mother requested the documentation used in his evaluation. Kilmer gave her his shorthand notes but refused to release recordings or transcripts of his interviews. When Karin continued to pursue the information, Kilmer sent her a cease-and-desist letter.

Sometimes the contents of evaluators' reports are only disclosed if the PRE is subpoenaed and testifies in court.

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That's how one woman said she found out that Kilmer had not mentioned her ex-husband's violence against her and her daughter in his recommendations. The woman asked to remain anonymous for fear of retaliation from her ex-husband.

In that case, Kilmer was not acting as a PRE but as a court-selected investigator. The court appointed Kilmer in August of 2019. Midway through the evaluation, she said, she learned of Kilmer's record of domestic violence but didn't challenge his involvement for fear it would hurt her case.

In her initial interview, she told Kilmer that her husband had become increasingly violent toward her after she became pregnant with their child, according to the woman and Kilmer's court testimony. When she was five months pregnant, her ex-husband was arrested and charged with assault after grabbing her hair and slamming her head into the ground, resulting in a concussion and a neck contusion, according to medical records. "Assault" is listed as part of the medical diagnosis. The woman was reluctant to pursue charges and the district attorney chose not to prosecute the case, according to court testimony.

Under cross-examination in the couple's custody case, Kilmer said he knew about the incident and had reviewed the husband's arrest records and the woman's emergency room medical records. Explaining why he had excluded those details from his report, Kilmer said, "I don't take medical providers' consideration or determination of whether a crime happened or not. Allegations, documentation, validations are not reality."

In the same custody case, Kilmer omitted witness accounts of the father grabbing his then-2-year-old daughter by the neck and lifting her off the ground. Under questioning, Kilmer acknowledged that more than one source had described the incident to him, but said he "didn't understand"

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if abuse “had actually taken place or not.”

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The mother said that when she told Kilmer about the incident, he chastised her for not calling the police. No charges were filed.

In his final recommendations, Kilmer told the court that “both parents” appeared to have made “mistakes” and exhibited “poor judgment.” Among the mother’s mistakes, he noted, was “publicly disparaging” her husband. Kilmer did not specify mistakes made by the father.

In court testimony, Kilmer said he did “consider” in his evaluation the fact that the father had lied when asked if he’d been arrested for domestic violence, but Kilmer decided against mentioning it in his report. “It ultimately didn’t seem to be something that was germane to the issue of trying to figure out ... what was the safest and most appropriate parenting plan for [the child]. ... I made [recommendations] with the understanding that there were these allegations but they were just that, allegations.”

This month, the judge adopted most of Kilmer’s recommendations and awarded the parents joint custody. While Kilmer had recommended that the parents share decision-making authority, the judge awarded that power solely to the mother.

Legal and custody experts advise court-appointed mental health professionals against agreeing to participate in cases involving allegations of abuse if law enforcement is still investigating them. “It is not the place of a custody evaluator to determine if abuse took place, that’s a criminal matter,” said Brantley, the chair of the APA child custody task force. Brantley said that this is a best practice but not a formal guideline.

In 2020, Kilmer accepted a custody case involving allegations of spousal rape and child sexual abuse and issued a report while

police were still investigating the allegations involving the child. (Police closed the spousal rape inquiry shortly before Kilmer's appointment due to a lack of corroborating witnesses or DNA evidence, according to the police report.)

Kilmer did not speak to the detective investigating the case, according to his report. The police department confirmed to ProPublica that they have no record of Kilmer contacting them. The detective investigating the case also confirmed that the child abuse case remains open.

Kilmer also did not interview a social worker at a local children's hospital who had reported suspected abuse of the same child to the Adams County Sheriff's Office. According to police records, the hospital employee said that the then-2-year-old child was brought in for an exam because a caretaker reported she was "displaying abnormal behavior" after staying with her father, and the girl was "touching and rubbing her vagina."

In his PRE report, Kilmer accused the mother of "knowingly making false allegations in order to further a legal position." He also threatened — in the only portion of the report in capital letters, bolded and underlined — that he would advise the court to restrict the mother's parenting time if she subjected the child to further physical examinations: "IF MOTHER CONTINUES, UNFORTUNATELY FOR THE CHILDREN A RESTRICTION OF HER PARENTING TIME SHOULD BE REVIEWED BY THE HONORABLE COURT, DESPITE HER OTHERWISE EXCELLENT PARENTING SKILLS."

Lawrence Jay Braunstein, a former prosecutor and expert on child abuse litigation, said custody evaluators should not give an opinion as to whether abuse has or has not occurred. To do so would be unethical and inappropriate, he said. "Custody evaluators stay in their lane, that's the theory," said Braunstein.

Kilmer declined to comment on why he did not contact law enforcement investigating this case or why he deemed the abuse allegations to be “false.”

“People often ask me, ‘How can you tell if people are lying?’ That’s where my own clinical experience comes in,” he told ProPublica. “I know what it looks like when somebody’s telling me the truth.”

“So easily rigged”

A Colorado law that took effect in January requires court evaluators to receive additional training on how to identify domestic violence and child abuse and on how a history of abuse should be weighed in custody recommendations. The law also tasked the court with vetting PREs and reviewing complaints against them.

The bill’s sponsor, state Rep. Meg Froelich, hopes it will spur improvements, but remains unflinching in her criticism of the system.

“Apparently, we don’t even have the ability to prevent convicted domestic abusers from being PREs,” said Froelich, adding that she was not referring to any specific PRE.

Despite the system’s problems, Froelich sees value in mental health professionals advising the court. “But what we don’t need are court professionals being hired and paid exorbitant sums of money by one of the parties.”



Colorado State Rep. Meg Froelich speaks before the signing into law of the reproductive health equity act, Monday, April 4, 2022, in a ceremony outside the governor's mansion in Denver. Colorado has joined several other Democratic-led states in codifying the right to an abortion in state law. (AP Photo/David Zalubowski)

Colorado allows one party to a custody dispute to request and pay for a court evaluator, though the court must approve and issue the appointment.

“The PRE system is so easily rigged,” Froelich added. “PREs are racking up huge expenses, which of course benefits the more affluent spouse.”

Kilmer acknowledged that custody evaluators are put in an ethically complicated situation when one party pays them to do work on behalf of the court.

“Sometimes people are like, ‘Hey, I’m paying you! I hired you!’” said Kilmer. “And then, more often than not, the other party will complain and be like, ‘I’m not the one that wanted you. You’re clearly working for them.’”

Kilmer said he addresses this by encouraging both parties to be “upfront” about any concerns they might have about his objectivity.

PREs can earn even more by serving as expert witnesses in custody cases. And unless the court stipulates otherwise, the party who requests the testimony foots the bill.

“Payment for the evaluation will not cover testimony as an expert witness,” states a PRE contract reviewed by ProPublica.

“I charge time for preparation, travel and a four-hour minimum for expert witnessing,” Kilmer told ProPublica. He said his hourly rate is \$325.

Robin M. Deutsch, a former chair of the APA Ethics Committee who trains judges, lawyers and court-appointed custody professionals in how to recognize intimate partner violence, was surprised Colorado courts allow PREs to act as expert witnesses while being paid by one party.

It is not unusual for an evaluator to testify in court if they are subpoenaed, she said. But “agreeing to shift from a parental evaluator role to be an expert witness hired by one side is absolutely an ethics code violation.” An evaluator is “the court’s witness” and should not appear to be working for one party by testifying on their behalf, she said.

Bill DeLisio, a spokesperson for the court, said Colorado law allows PREs to work as both a custody evaluator and an expert witness on the same case. The court is responsible for monitoring complaints about their objectivity and managing their testimony, he said.

Kilmer said he frequently acts as an expert witness on cases for which he also served as an evaluator. He dismissed as “ridiculous” concerns over the ethics of serving in both capacities.

“If you can produce a report, you can talk about it to the court,” he said.

Kilmer said acting as an expert witness is his “favorite” part of the job and he has improved his courtroom presentation through years of involvement in Toastmasters.

“Being in court is like being in Kabuki theater,” said Kilmer, who received his undergraduate degrees in dramatic literature and theater arts. “There’s a whole presentation — there’s a whole way that you can be more effective, by the way you talk and the way you present yourself. And you do all those things not because you’re being false, but just because that’s what the theater requires.”

“Questioning every bit of reality I had fought to reestablish”

In pleading guilty to misdemeanor assault, Elina’s father, Cedric Asensio, avoided a trial on charges of felony child abuse and criminal neglect. He received a deferred judgment, meaning at the end of a probation period, the plea was withdrawn and the case dismissed.

Cedric Asensio’s attorney, Kimberly Diego, said in a statement to ProPublica that the initial charge of felony child abuse against her client was “very serious,” but noted that the case was ultimately resolved through a plea to misdemeanor assault and deferred sentence, which indicates “there is much more to the story.”

“In reaching this resolution, a host of information was provided to the prosecuting attorney,” Diego stated. “What was provided included text messages, social services records, police reports, medical records, emails, and a number of media files. It was after consideration of these materials that the case was resolved in the way it was.”

When the criminal case was resolved, Elina was living full time with her mother, was going to therapy and had started ninth grade.

“Things were starting to feel a little more normal,” she said.

Her interview with Kilmer — in which she recalls him pressuring her to forgive her father and saying that it would “ruin” her relationship with her dad if she didn’t — triggered what she described as post-traumatic stress and depression. The aftermath of

the conversation left her “questioning every bit of reality I had fought to reestablish.”

She stopped going to school. She sat alone in her room for hours and went days without sleeping. She lost weight and wanted to be even thinner. She thought several times about taking her own life.

“I wanted there to be less of me,” she said. “And I was too scared to ask for help. I didn’t want to prove them right, that I was sick. That I was out of control. That this was, somehow, my fault.”

Elina’s father retains equal decision-making authority over his daughter.

In June 2020, he refused to let her participate in a mentor and therapy program, according to court documents.

A few months later, when Elina wanted to get her learner’s permit, she said he told her no. Elina got her driver’s license over her father’s objections.

In May 2021, he denied her request to receive a COVID-19 vaccine, according to court documents. Elina said she got the vaccine anyway.

Cedric Asensio said he requested that his ex-wife wait a few weeks “to get more data on safety” before Elina got the vaccine.

Karin Asensio filed an emergency motion requesting that her daughter be allowed to address the judge directly about the parenting arrangement.

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The court denied the motion, saying that she had not offered new reasons why the parenting arrangement should change.

Elina keeps a countdown app on her iPhone tracking the days, hours and minutes until she turns 18 and is no longer under her father's control.

She never got back the gold necklace she was wearing the day her father assaulted her. The chain had been given to her by her maternal grandmother a few weeks earlier. The nurse who examined her in the emergency room swabbed the small four-leaf clover pendant dangling from the broken chain before giving it to police as evidence. Elina never saw it again.

“It’s really hard to think about the things I’ve lost,” she said. “But it’s scarier to think about how much more I could have lost, if my injuries that day hadn’t been bad enough for people to believe me.”

Mariam Elba contributed research.