

ARTICLES

VIEW FROM THE BENCH: PARENTAL MENTAL HEALTH AND CHILD CUSTODY

Hon. Edmund M. Dane and Jamie A. Rosen

Family courts are confronted with an increasing number of custody or visitation disputes where a parent suffers from a mental illness. In fact, when making a custody determination, most state statutes include parental mental health as a factor to consider in a best interests analysis. This article presents best practices from the perspective of a family court judge when it comes to handling cases involving parental mental health and custody, including a discussion of the nexus between parental mental health and the parent's relationship to the child and the weight given to custody or forensic evaluations.

Key Points for the Family Court Community:

- In determining the best interests of the child, the family court judge must evaluate the parent-child relationship, parenting capacity, and parenting skills.
- Most state statutes authorize judges to consider parental mental health as one of many factors in a best interests analysis.
- The judge must weigh all of the evidence and determine whether a parent's mental illness impacts the best interests of the child.
- In making this determination, the judge can rely on the custody evaluation, the child's attorney or guardian ad litem, and personal observations, among other sources.

Keywords: *Best Interests; Custody; Divorce; Evaluation; Mental Health; Mental Illness; Parental Fitness; and Parenting.*

INTRODUCTION

Child custody and visitation disputes are extremely difficult for judges to decide.¹ These family court matters may involve complex issues such as requiring the judge to review past behavior and family history, predict future behavior and outcomes, and rely on expert testimony to ultimately determine what is in the best interests of the child. Part of this analysis requires the judge to evaluate the parent-child relationship, parenting capacity, and parenting skills. This close examination of the family might reveal a potential mental health issue in one or both of the parents.

Family units where one or more parent suffers from a mental illness are more likely to experience divorce than families without parental mental illness.² Further, research suggests that parents suffering from a mental illness are more likely to lose custody of their children.³ Most state statutes authorize judges to consider parental mental health as one of many factors in a best-interest analysis.⁴ A parent's mental illness may increase the risk for a child's own emotional or developmental growth or interfere with the ability to care for the child and provide a safe home environment. However, not all children will be negatively affected, or affected in the same way. The fact that a parent has a mental illness alone is not sufficient to deny physical custody or parenting time.⁵ Rather, the court must evaluate how the mental illness affects the parent's behavior, the ability to nurture the child, and the overall safety of the child. Ultimately, it is up to the family court judge to weigh *all* of the evidence and determine whether a parent's mental illness impacts the best interests of the child.

When determining what is in the best interests of the child, the judge can rely on several sources of evidence, such as the custody evaluation (also known as a forensic evaluation), the child's attorney or guardian ad litem, and personal observations (e.g., testimony of the parties) in order to

Correspondence: jrosen@abramslaw.com

determine what is in the best interests of the child. Often judges will conduct in-camera interviews of the child as well before making a final determination of custody.

This article presents the best practices from the perspective of a family court judge when it comes to handling cases involving parental mental health and custody. The first section presents a brief overview of the current best interests of the child standard as well as a discussion of the different types of parental mental health issues. The second part explores the many ways in which a judge can obtain information about the parent's mental health issues, including the custody evaluation, the child's attorney, and personal observations. The following part presents the best practices, including an analysis of the nexus between parental mental health and the parent's relationship to the child. The article then addresses the issue of judicial training, stressing the importance of obtaining adequate knowledge of mental health issues as they impact family court proceedings.

CHILD CUSTODY STATUTORY REQUIREMENTS AND PARENTAL MENTAL HEALTH

BEST INTERESTS OF THE CHILD

Most, if not all, family law proceedings revolve around the best interests of the child. This includes, but is not limited to, child custody, child support, adoption, and termination of parental rights. In all of these proceedings, the court's primary concern is the safety and well-being of the children involved.⁶

The majority of jurisdictions base their best-interest factors on the guidelines proposed by the Uniform Marriage and Divorce Act. This Act states that, with regard to child custody matters, the court shall determine custody "in accordance with the best interest of the child."⁷ The court shall consider the wishes of the parents and the child; the relationship between the parents and the child; the child's adjustment to home, school, and the community; and the mental and physical health of the individuals involved.⁸ In New York, for example, the "essential consideration in making an award of custody is the best interests of the child."⁹ The judges are charged with the task of weighing multiple factors without any strict statutory guidelines in order to determine the best interests of the child.

PARENTAL MENTAL HEALTH

Many terms are used to describe a diagnosable or clinically recognizable set of symptoms or behaviors that interfere with social, academic, or occupational functioning, including "mental illness," "mental disorder," and "psychiatric disorder," to name a few.¹⁰ Under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* there are countless mental illnesses, including depressive disorders, psychotic disorders, substance-related disorders, eating disorders, and personality disorders, among many others.¹¹ For the purpose of this article the terms "mental health" or "mental illness" are used to describe both clinically diagnosable disorders as well as less severe mental health problems.¹² Judges and the court system should be more concerned with the behaviors, symptoms, and treatment, if any, rather than the name of the illness.

If a parent suffers from a mental illness, the court must assess whether that illness interferes with the parent's ability to parent. The simple act of seeking custody of the child places the parent's mental health and parental fitness at issue.¹³ Many states require that judges consider the mental and physical health of all individuals involved, and some states even include language to the extent that "a disability alone shall not be a basis to deny or restrict parenting time."¹⁴ The existence of a mental health issue does not, by itself, warrant a denial of physical custody or parenting time. For example, the parent might be participating in mental health treatment, taking medication, and/or functioning well in the community. Parents who have insight into their illness and are responsibly obtaining treatment for that illness may be able to effectively parent just as well as the parent who is not ill.

On the other hand, however, if the mental illness makes it impossible for the parent to provide a safe level of care to the child, the court may deny that parent custody and may even limit visitation or order supervised visitation. For example, instances where an individual fails to acknowledge his/her mental illness, lacks insight as to its severity, and/or fails to undertake the treatment required may be indicative of an inability to parent.¹⁵ The court should evaluate whether the parent, in the past, has adequately utilized medical, psychiatric, psychological, social, or rehabilitative services to care for his/her mental illness.¹⁶ Additionally, if the parent has significant deficits in child care knowledge or life skills, that parent may lack capacity to take care of the child currently and in the foreseeable future.

Another consideration for the court is whether a parent's substance or alcohol use compromises that parent's abilities and/or represents a threat to the child. A parent's addiction to narcotics or alcohol may be considered in determining the fitness of that parent and the suitability of the home that the parent can provide. A parent who suffers from substance use addiction or alcoholism may be denied custody and past substance abuse may warrant denial of custody even to a parent who has been rehabilitated.¹⁷

HOW DOES THE JUDGE OBTAIN INFORMATION ABOUT PARENTAL MENTAL HEALTH?

When evaluating parental mental health in the context of a family court proceeding, the judge may be presented with conflicting, unreliable, or incomplete information. The clinical information and documented history about a parent's alleged mental health issue can come from a variety of sources. The court must obtain a complete mental health history from any treating mental health professionals, including documentation that the parent is taking any prescribed medication and attending recommended therapy sessions or has been rehabilitated and is not actively symptomatic. Such information may come from the litigant, the custody evaluator, the child's attorney, or personal observations made by the judge throughout the proceeding, among other sources.

THE CHILD CUSTODY EVALUATION

What is a Child Custody Evaluation?

A child custody evaluation (also known as a forensic evaluation) is an extremely useful tool whereby a mental health professional, usually a psychologist, evaluates the family and makes a recommendation to the court as to child custody and parenting time that is in the child's best psychological interests.¹⁸ There are several ways to request a child custody evaluation in a family law proceeding: one or both of the parties can request an evaluation or the judge has discretion to request an evaluation. Additionally, litigants should have the opportunity to hire independent mental health professionals to evaluate the parties and child(ren) and to submit reports to the court as well.

Who Should the Custody Evaluator Interview?

The evaluator must interview all relevant people involved in the lives of the litigants and the children, including any mental health professionals or medical providers, teachers, or day-care personnel. The report should include a discussion of one-on-one meetings with each parent and child as well as the observations of the interactions between the parents and the child(ren). On the clinical side, the evaluation must include a review of the parents' and/or child's psychiatric history and medical records and the results of meetings and/or conversations with such medical or mental health care providers. The report should also include the results of the administration of any psychological testing as well as an analysis of the results. The APA has set out specific guidelines for child custody evaluations in certain family law proceedings that must be followed.¹⁹

How Should a Judge Use the Evaluation in Determining the Best Interests of the Child?

There is often a debate among judges as to whether the evaluator should ultimately offer a custody recommendation to the court. Whether or not the report includes such a recommendation, the report is useful in evaluating whether a parent's mental illness impacts his/her parenting capacity. The judge should read the report with a critical eye and not solely rely on the evaluator's recommendation, if given. The judge must take into consideration the time the evaluator spent with each family member and in what context the evaluator observed any interactions. The judge must also take into consideration what clinical information is known to the evaluator and the credibility of such information. Again, the judge must evaluate and weigh information from all of the sources included in the report.

The evaluation can also be used to offer recommendations for suggested services or treatment for the parents and/or child. After the divorce is final and after the child custody decision is made, these families will likely need individual and family counseling and potentially the help of a parenting coordinator.²⁰ The mental health professional appointed to evaluate the case can offer insight into the type of recommended treatment or counseling, as well as parenting classes, if necessary.

GUARDIAN AD LITEM/ATTORNEY FOR THE CHILD

In a child custody dispute, often an attorney is appointed to represent the child's interests. Whether this attorney takes on the role as an attorney for the child or as a guardian ad litem or "best interests" attorney, that attorney plays an important role in the family court proceeding. The American Bar Association (ABA) Custody Standards define the attorney for the child as "a lawyer who provides independent legal counsel for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client."²¹ A "best interests attorney" is defined as an attorney who "provides independent legal services for the purpose of protecting a child's best interests, without being bound by the child's directives or objectives."²² Regardless of the attorney's title, that attorney will likely have multiple interactions with the child, alone, in the presence of each parent, and in the presence of both parents together. The attorney may be privy to whether or not the child has a healthy relationship with each parent. This insight and the attorney's knowledge of what the child wants are all useful pieces of information for the judge to have when determining custody.

Ultimately, the judge may want to know what the child wants. The attorneys appointed by the court to represent the child during the litigation must get to know their child client and understand the child's wishes. The child's attorney should be actively involved in all parts of the proceeding including discovery, examination of witnesses, introduction of evidence, and legal argument.²³ The child's attorney, however, should not assume the role of making a recommendation to the judge. It is not appropriate for an attorney to offer any clinical observations or conclusions to a judge regarding a parent's mental health. There is no guarantee that the attorney has any clinical training specific to mental illness or is qualified to offer a clinical opinion as to how a parent's mental illness impacts a child. The attorney can, however, be a useful source of information in other ways.

PERSONAL OBSERVATIONS

By the end of a child custody matter, the judge will have had the opportunity to observe both litigants, the child(ren), all attorneys, all mental health professionals, and all other family members involved, if any. It is important to note that sometimes a judge may not have the opportunity or resources to appoint an attorney for the child, a custody evaluator, or a mental health professional to evaluate the parties. Even in cases where a judge may have every resource available to him/her, the judge may rely on his/her personal observations and courtroom testimony in making a "best interests" determination.

Judges can rely on common sense and their own experience and training in evaluating the testimony of all parties and making a determination.²⁴ Judges bring their own life experience to the bench as well, as attorneys, and maybe even as parents. The judge should highly consider what s/he sees and hears in

the courtroom. Judges must take note of the parties' tone, body language, and attitude. It is also important to be aware of any cultural differences in the parties' nonverbal communication such as making eye contact.²⁵ Judges should also understand that family law proceedings are extremely stressful considering what is at stake. Some litigants are more articulate than others, the parties are under stress, and they are likely in court for the first time in their lives. It is recommended that judges take a holistic approach and try to truly understand each litigant. That being said, the parents' behavior and demeanor in the courtroom may be indicative of what type of parent s/he will be outside of the courtroom.

Judges must be careful not to forget about the children involved in the proceeding. After all, the judge must determine what is in the best interests of the *child*, not the parents. It is easy to lose sight of the child, literally, because the children are minimally involved throughout the proceeding. Therefore, it is highly recommended that the judge conduct an in-camera interview with the child. It is helpful to hear directly from the child, if the child is an appropriate age, what that child wants or needs in terms of education, health, social interaction, and nurturing. Through the in-camera interview the judge can also try to detect whether parental alienation exists or if the child is being influenced by a parent to testify in a certain way. The judge can use this interview to see the complete picture of who can provide the best and safest home environment for the child currently and in the future.

The judge must ultimately take all of this information and evaluate how it impacts a parent's ability, presently and in the foreseeable future, to provide proper and adequate care for the child. In doing so, the judge must remain fair and unbiased and decide what is best for the child's well-being.

BEST PRACTICES AND RECOMMENDATIONS

The existence of a mental health issue does not, by itself, warrant a denial of physical custody or parenting time.²⁶ A parent suffering from a mental illness may still be capable of providing a nurturing, loving environment and meeting all of the child's needs. There must be a nexus between the parent's mental health condition and the relationship to the child in order for those issues to impact a custody decision.²⁷ In determining parental fitness the judge must evaluate all relevant factors while always keeping in mind how those factors affect the parent's relationship to the child.

Research shows that there are many negative effects of mental illness on parenting capacity. Children of parents suffering from a mental illness are at a higher risk for problems in infancy, social and behavioral problems, mental health issues, and criminal or suicidal behavior in adolescence.²⁸ The impact of mental illness on parenting capacity varies depending on the child's age at onset, severity and duration of the illness, and the strengths of resources of that individual and family.²⁹ For example, depression impacts the ability of parents to effectively guide, support, and nurture their children and depressed parents are found to discipline their children more harshly.³⁰ Depressed parents are also known to be less available to their children.³¹ Further, the specific characteristics of the parent's mental illness may influence a child's own psychopathology and negatively affect that child's development.³² There is evidence, however, that a parent's mental illness may affect a child differently depending on the child's age. During infancy and early childhood, parental mental illness will have a greater effect on the child's development, such that the younger the child is during the onset of parental mental illness, the greater the risk to the child.³³ It is important to consider all factors and characteristics of the parent's mental illness when evaluating whether that illness is negatively impacting parenting capacity.

Sometimes, however, individuals are wrongfully burdened with their past. The judge must try to avoid tagging a litigant with a history that s/he outgrew. With or without mental illness, all people have limitations. Those limitations do not necessarily prevent an individual from becoming a custodial parent. Custody may be awarded to a parent who previously suffered from a mental illness, but it must be demonstrated that the illness is in a state of remission and the award is otherwise in the best interests of the child.³⁴ Additionally, custody may be awarded to a mentally impaired parent where the parent's condition does not render him/her unfit and the award is in the child's best interests.³⁵

When determining what is in the best interests of the child and evaluating whether a parent is fit, the court must look to several other factors in addition to any mental health issues. Each parent's

credibility, conduct, stability, lifestyle, morality, financial status, professional achievements, and personal associations are relevant in assessing his/her respective fitness as a parent.³⁶ It is important to have information about each parent's capabilities and history of parenting up to the present time in order to accurately predict the foreseeable future ability to parent. For example, evidence of responsibly navigating a child's medical appointments, educational needs, and extracurricular activities should also be taken into consideration. The court should examine factors such as the parent's likelihood to encourage a relationship with the noncustodial parent, the child's relationship with siblings, the child's age and maturity, and any other relevant factors.³⁷ The list of potential factors is endless and statutes generally do not instruct the judge on the weight given to each one.³⁸ Parental mental health is just one of many factors to be considered in making the ultimate decision.

JUDICIAL TRAINING

The existing stigma against mental illness leads many individuals to believe that those who suffer from a mental illness are violent or unable to function in their everyday lives. In the context of a child custody dispute, this stigma may cause fear, prejudice, and discrimination.³⁹ It is difficult, but important, for the judge to set aside stereotypes and bias in order to fairly ascertain whether the parent's mental illness is even a determinative factor at all. This requires judicial training to understand the symptoms and behaviors of the mental illness, if any, as well as the effect of mental illness on parenting capacity. This also requires that the judge be able to evaluate expert recommendations with a critical eye rather than blindly relying on clinical recommendations.

First, judges must address their own personal bias toward potential litigants that may appear in the courtroom. The judge must set aside any bias based on race, gender, socioeconomic status, disability, sexual orientation, or mental illness. Often the phrase "mental illness" causes alarm before a custody trial even begins. It is up to the judge to create an equal and fair playing field.

Second, judges must be required to undergo a training program focused on mental illness as it impacts family court proceedings before taking the bench in family court. The training program should cover topics such as mental illness and symptoms, medications and side effects, substance and alcohol abuse, and the relevance and significance of mental health issues in family law. Additionally, judges should be provided with written materials or a judge's guide pertaining to mental illness and substance use so that they have access to reliable information during their day-to-day work. It would also be helpful for judges to have access to a list of local resources that can be offered to families in need. While judges may be highly educated and experienced in child custody laws, they normally do not have similar education or experience with regard to mental illness diagnosis, treatment, and research. As a result, judges need specific training as to how to evaluate and apply such information received from testimony of the litigants and expert recommendations to make an informed decision about the best interests of the child.⁴⁰

It is important to note that attorneys for each of the litigants should also undergo training in mental health issues and understand how those illnesses may or may not impact parenting capacity. Whether through continuing legal education courses or otherwise, attorneys should seek education in ethics regarding capacity determinations and representing a potentially impaired client, as well as the various substantive topics recommended for judicial training, discussed above. A mentally ill parent contesting custody is likely at a disadvantage due to the inexperience or lack of knowledge their attorney possesses about the unique issues involved.⁴¹ Additionally, the attorneys may have their own personal biases or stereotypes leading to prejudice and discrimination.

CONCLUSION

Across the United States, a large part of the population is suffering from mental illness, ranging from mild disturbances to severe and debilitating conditions. In family law proceedings, those mental

illnesses may be brought to the judge's attention to be considered as a factor in determining custody. In fact, most state statutes allow judges to consider parental mental health as one of many factors in a best-interests analysis. Not all mentally ill individuals can handle the responsibilities of parenthood. There are certainly instances where custody would be inappropriate or unsafe for the child, where supervised parenting time is recommended, or where visitation is simply denied. However, many individuals can control their illness and symptoms through medication and/or therapy. With the proper support they can be nurturing parents.⁴² The label of "mental illness" does not automatically lead to a denial of physical custody or parenting time. The court must evaluate how the mental illness affects the relationship with the child and the child's physical and emotional health, if at all. Ultimately, the court's primary concern is the safety and well-being of the child(ren) involved.

NOTES

1. Most parents filing for divorce resolve the various issues, including custody, through some type of agreement outside of the courtroom. This article only pertains to family law matters where custody is contested, requiring judicial intervention. See Am. Psychological Ass'n (APA), *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 AM. PSYCHOLOGIST 863, 863 (2010).
2. Lisa J. Slominski, *The Effects of Parental Mental Illness on Children: Pathways to Risk to Resilience from Infancy to Adulthood*, 13 (2010) (Ph.D. dissertation, Univ. of Michigan).
3. *Parenting*, MENTAL HEALTH AMERICA, <http://www.mentalhealthamerica.net/parenting> (last visited Oct. 12, 2015).
4. Anat S. Geva, Comment, *Judicial Determination of Child Custody When A Parent Is Mentally Ill: A Little Bit of Law, A Little Bit of Pop Psychology, and A Little Bit of Common Sense*, 16 U.C. DAVIS J. JUV. L. & POL'Y 1, 1 (2012).
5. In fact, many state statutes specifically list "the mental and physical health of the parents" as one of many best interests factors, but carve out an exception such as "except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child." CONN. GEN. STAT. § 46b-56(c) (2013).
6. See Eschbach v. Eschbach, 56 N.Y.2d 167, 171, 436 N.E.2d 1260 (1982); Friederwitzer v. Friederwitzer, 55 N.Y.2d 89, 432 N.E.2d 765 (1982); Francois v. Hall, 73 A.D.3d 1055 (2010). In *Friederwitzer v. Friederwitzer*, the New York State Court of Appeals held that the standard for child custody matters involves the "best interests of the child when all of the applicable factors are considered." *Id.*
7. UNIF. MARRIAGE & DIVORCE ACT § 402, 9A NAT'S. CONF. OF COMM'R. UNIF. ST. LAW. 561 (1998).
8. *Id.*
9. Felty v. Felty, 108 A.D.3d 705 (2d Dep't 2013); Brown v. Brown, 97 A.D.3d 568 (2d Dep't 2012); Rodriguez v. Guerra, 28 A.D.3d 775 (2d Dep't 2006); Scheuring v. Scheuring, 27 A.D.3d 446 (2d Dep't 2006); Zindle v. Hernandez, 26 A.D.3d 338, (2d Dep't 2006); Louise v. Stephen, 64 N.Y.2d 946, 477 N.E.2d 1091 (1985).
10. Leone Huntsman, *Parents with Mental Health Issues: Consequences for Children and Effectiveness of Interventions Designed to Assist Children and Their Families*, LITERATURE REVIEW, 3 (Nov. 2008), available at http://www.community.nsw.gov.au/docswr/_assets/main/documents/research_parentalmentalhealth.pdf.
11. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013).
12. This article does not address parents with intellectual or physical disabilities.
13. Ortiz v. Winig, 82 A.D.3d 1520, 1522 (2011) (*citing* Moor v. Moor, 75 A.D.3d 675, 678, 903 N.Y.2d 822 (2010); Matter of Caccavale v. Brown, 271 A.D.2d 717, 718-719, 705 N.Y.S.2d 139 (2000)).
14. Jennifer McDonald, *What will the Court Consider When Deciding Parenting Time and Decision-Making for Your Child?*, COLO. FAM. LAW. (Jan. 21, 2014), <http://www.coloradofamilylawyer.com/what-will-the-court-consider-when-deciding-parenting-time-and-decision-making-for-your-child/> (*citing* C.R.S. § 14-10-124(1.5)(a)).
15. See Matter of Maleeka Abdullah M., 65 A.D.3d (2d Dep't 2009); Matter of Robert XX, 290 A.D.2d 753 (3d Dep't 2002); *See also* Moor v. Moor, 75 A.D.3d 675, 678, 903 N.Y.2d 822 (2010) (stating that the mother's fitness was questioned due to her long history of mental illness and failure to obtain treatment).
16. N.Y. Soc. SERV. LAW § 384-b (7)(c) (McKinney 2014); Matter of George M., 48 A.D.3d 926 (3d Dep't 2008); Administration for Children's Services v. Sonia R. and Larry W., 30 Misc. 3d 1211A (Fam. Ct. 2010).
17. *See* Matter of F., 76 Misc. 2d 617, 351 N.Y.S.2d 337 (Sur. Ct. 1974); Matter of "John" Children, 61 Misc. 2d 347, 306 N.Y.S.2d 797 (Fam. Ct. 1969); Darlington v. Cobb, 135 Misc. 668, 239 N.Y.S. 301 (Sup. Ct. 1930).
18. Philip M. Stahl, *Anatomy of a Child Custody Evaluation*, FAM. ADVOC., ABA FAM. L. SEC. (Summer 1999), available at <http://www.parentingafterdivorce.com/articles/anatomy.html>; *see also* APA, *supra* note 1, at 864 (stating that the purpose of the evaluation is to help the judge in making a custody decision that is in the psychological best interests of the child).
19. APA, *supra* note 1, at 863.
20. A parenting coordinator is a dispute resolution professional that can assist divorced or separated parents with decision making and complying with parenting plans or court orders. The overall goal is to reduce the pattern of high-conflict or

litigation over the children involved and prevent such conflict from harming the children. Am. Psychological Ass'n, *Guidelines for the Practice of Parenting Coordination*, 67 AM. PSYCHOLOGIST 63, 64 (2012), <https://www.apa.org/practice/guidelines/parenting-coordination.pdf>.

21. Am. Bar Ass'n, *Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 FAM. L.Q. 131, at Standard II (B)(1) (2003).

22. *Id.* at Standard II (B)(2).

23. American Bar Association Child Custody and Adoption Pro Bono Project, *A Judge's Guide: Making Child-Centered Decisions in Custody Cases*, 39 (2d ed. 2008), available at http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf.

24. Geva, *supra* note 4, at 59.

25. The judge should be aware of cultural differences and potential biases due to race, ethnicity, literacy, language, mental or physical disability, education, gender, age, and sexual orientation. See ABA Child Custody and Adoption Pro Bono Project, *supra* note 23, at 9.

26. *Id.* at 20 (*citing In re Marriage of Carney*, 24 Cal. 3d 725, 598 P.2d 36 (1979)). This case addressed the issue of physical disability, however, this court's reasoning has been applied to cases involving cognitive or psychological disability as well. *Id.* at 20 n.51.

27. UNIF. MARRIAGE & DIVORCE ACT § 402, *supra* note 7 (stating that “[t]he court shall not consider conduct of a proposed custodian that does not affect his relationship to the child”).

28. Huntsman, *supra* note 10, at 5–6.

29. Joanne Nicholson et al., *Critical Issues for Parents with Mental Illness and Their Families*, Center for Mental Health Services/Substance Abuse and Mental Health Services Administration, at i (July 30, 2001) available at http://escholarship.umassmed.edu/cgi/viewcontent.cgi?article=1142&context=psych_pp.

30. Slominski, *supra* note 2, at 11.

31. *Id.*

32. *Id.* at 15.

33. *Id.*

34. *See Matter of Anonymous v. Anonymous*, 34 Misc. 2d 444, 226 N.Y.S.2d 704 (Sup. Ct. 1959); *Matter of Reinhart v. Reinhart*, 33 Misc. 2d 80, 227 N.Y.S.2d 39 (Sup. Ct. 1961); *see also Thomas J.D. v. Catharine K.D.*, 79 A.D.2d 1015, 435 N.Y.S.2d 338 (1981) (custody awarded to father where mother had periods of mental illness alternating with periods of complete remission).

35. *See Yrala v. Yrala*, 181 A.D.2d 972, 581 N.Y.S.2d 460 (1992); *Penders v. Penders*, 139 A.D.2d 963, 527 N.Y.S.2d 935 (1988).

36. *See, e.g.*, *Church v. Church*, 238 A.D.2d 677, 656 N.Y.S.2d 416 (1997); *Walling v. Wallinger*, 466 N.Y.S.2d 826 (1983); *McIntosh v. McIntosh*, 451 N.Y.S.2d 200 (1982); *Salk v. Salk*, 89 Misc. 2d 883, 393 N.Y.S.2d 841 (N.Y. Sup. Ct. 1975), *aff'd*, 53 A.D.2d 558, 385 N.Y.S.2d 1015 (1976).

37. *See Mullins v. Riener*, 100 A.D.3d 760, 953 N.Y.S.2d 664 (2012) (listing several factors to be considered in determining the child's best interests).

38. *See Geva, supra* note 4, at 13.

39. Michael J. Fitzpatrick, *How Shootings Stigmatize People Living with Mental Illness*, NAMI (Sept. 23, 2013), <http://blog.nami.org/2013/09/how-shootings-stigmatize-people-living.html>.

40. *See Geva, supra* note 4, at 8.

41. *Id.* at 17.

42. Lisa W. Foderaro, *Helping Parents With Mental Illness*, N.Y. TIMES (May 18, 1994), available at <http://www.nytimes.com/1994/05/18/nyregion/helping-parents-with-mental-illness.html>.

The Honorable Edmund M. Dane serves as the supervising judge of the Nassau County Family Court, as well as an acting Supreme Court Justice in the State of New York. In addition to his administrative duties he currently presides over matters of abuse, neglect, custody/visitation, guardianship, and uncontested matrimonial matters. He also previously served as a judge of the Nassau County District Court. He began practicing in 1982 after earning his law degree from Brooklyn Law School. Prior to joining the Nassau County bench in 2007, he served as a trial attorney for the law firm of Dane & Dane. He is also a special professor of law at Hofstra Law School and a lecturer for the New York State Bar Association and Nassau Academy of Law. He is also an active member of the New York State Family Court Advisory Committee, as well as the NYS Committee on Standards & Goals.

Jamie A. Rosen is an associate attorney at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, & Wolf, LLP, located in Lake Success, New York. Her practice is primarily focused on mental health, health care, and elder law. As part of the firm's Mental Health Law practice, she represents major hospital systems, individuals, and families. This includes mental hygiene law matters such as Kendra's Law applications (Assisted Outpatient Treatment), involuntary psychiatric treatment and retention, and adult guardianship proceedings, among others. She received her J.D. from the Maurice A. Deane School of Law at Hofstra University in 2013 where she was an associate editor of the Hofstra Law Review.